



COMMITTEE ON PROFESSIONAL ETHICS

Opinion 833 (12/15/09)

Topic: Clients (Prospective); Communications;
Duty of Lawyer.

Digest: An attorney is not required to respond to unsolicited letters from incarcerated individuals requesting legal representation.

Rules: Rule 1.18(a); Rule 1.18(e).

QUESTION

[1] Is an attorney ethically required to respond to unsolicited letters from incarcerated individuals requesting legal representation for personal injury or other claims?

OPINION

[2] No provision of the New York Rules of Professional Conduct imposes a general obligation upon an attorney to promptly answer unsolicited mail – or to answer it at all. We found that such an obligation arose under the former New York Code of Professional Responsibility only in the context of communications from an adversary or a client. See N.Y. State 407 (1975) (“The consistent failure of a lawyer to respond to telephone calls and correspondence from fellow *attorneys* is in violation of the Code. A lawyer is obligated to return telephone calls and inquiries from fellow members of the Bar, as well as from *clients*.”) (citing former EC 7-10, EC-7-37, EC 7-38, and EC 7-39); see also 22 NYCRR § 1210.1(5) (Statement of Client’s Rights provides that a *client* is entitled to have “telephone calls returned promptly”); N.Y. State 396 (1975) (“The consistent failure of a lawyer to respond to calls from his *clients* is in violation of [former] Canons 6 and 9”) (all emphasis added).

[3] We do not address whether an obligation to respond to communications from clients and other lawyers continues under the new Rules. We address here only unsolicited communications from incarcerated individuals who are neither adversaries nor clients. In New York, the only guideline of general application regarding an attorney’s obligation to respond to unsolicited inquiries from persons other than adversaries or clients appears not in the Rules of Professional Conduct, which are mandatory, but rather in Standard IV of the New York State Standards of Civility, an aspirational goal not subject to enforcement through discipline. Standard IV says: “A lawyer should promptly return

telephone calls and answer correspondence *reasonably* requiring a response.” 22 NYCRR Part 1200, app. at IV (emphasis added).

[4] Even applying that aspirational standard, however, we believe that an unsolicited letter from an incarcerated individual requesting legal representation does not, without more, reasonably require a response. We also note that a lawyer’s receipt of truly unsolicited communications requesting legal representation does not create a lawyer-client relationship. *See, e.g., Knigge v. Corvese*, 2001 WL 830669, at *3-4 (S.D.N.Y. 2001) (holding that multiple voicemail messages seeking legal representation and requesting return phone calls did not result in formation of an attorney-client relationship because it was not reasonable for caller to believe that his “unilateral” decision to leave such messages could result in such a relationship).

[5] Nor, under Rule 1.18 of the New York Rules of Professional Conduct, does the sender become a “prospective client” unless the lawyer subsequently “discusses” with the sender the “possibility of forming a client-lawyer relationship.” Rule 1.18(a); *see also* Rule 1.18(e)(1) (“A person who . . . communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship . . . is not a prospective client within the meaning of paragraph [1.18](a)”). Thus, Rule 1.18 confirms our view that an unsolicited letter from an incarcerated individual requesting legal representation, without more, does not reasonably require a response.

[5] This opinion does not address the circumstances, if any, in which an e-mail requesting legal representation or legal advice, although constituting the initial contact between a lawyer and the sender, may be deemed a response to a web site inviting public inquiry, in which case the communication could not be fairly characterized as “unsolicited.” *Cf. N.Y. City 2001-1* (absent a disclaimer warning that information sent by prospective clients will not be treated as confidential, information imparted to an attorney in good faith by a prospective client in an e-mail generated in response to an internet web site maintained by the law firm should be held in confidence even though the attorney has declined the representation).

CONCLUSION

[6] An attorney is not ethically required to respond to unsolicited letters from incarcerated individuals requesting legal representation.

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