



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

A new business has moved into my area of practice and opened a substantial facility. I am very knowledgeable about an area of law they are involved in, and believe I can provide them with effective service. Is it ethical for me to cold-call the President of the company to invite her to lunch to discuss my expertise and their legal needs? Alternatively, can I write the President to explain and offer my services?

A: The Model Rules in the area of attorney solicitation and advertising have changed dramatically over the years, easing what had been very limiting restrictions. This has also led to a fair variation in the rules currently in place in various jurisdictions, as some have kept step with the ABA Model Rules and others have retained more limiting provisions. Please check those specifically applicable in your jurisdiction.

Under the current version of the Model Rules, this question would be covered by Rule 7.3, which regulates "live person-to-person contact" to solicit professional employment for the lawyer's or the law firm's pecuniary gain. Comments 1 and 2 to the rule distinguish "live person-to-person contact," which the rule regulates from more indirect communication directed to the general public such as through billboards or other advertisements on various media or in response to internet searches. "Live person-to-person contact" is defined as "in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications where the person is subject to a direct personal encounter without time for reflection." This would cover, for example, telephone calls, video calls and face-to-face contact of the type you ask about.

The rule contains exceptions, however, that permit live person-to-person contact of certain target individuals, where the risk of overreaching communications is reduced. These include contact with a lawyer, e.g., in-house counsel of a target client; contact with a person who has a family, close personal or prior business or professional relationship with the lawyer or law firm; and contact with "a person who routinely uses for business purposes the type of legal services offered by the lawyer." Thus, your live person-to-person contact to solicit business from the President of the company would not be prohibited by Rule 7.3 if you have information that the President is a person who routinely engages outside counsel for the business.

As an alternative, Rule 7.3 does not restrict written solicitation, so for that purpose, a soliciting lawyer need only comply with the technical requirements of Rule 7.2 (concerning specialization and provision of a contact person), and the requirement of Rule 7.1 to avoid false or misleading statements. In the context of your questions, if you

are unable to determine whether the President is a person who routinely engages counsel in order to justify live person-to-person contact, you might consider a written communication offering to meet in person if she is the person who routinely engages counsel, or asking for referral to that person within the organization, while including in the communication reference to your qualifications or reasons why you believe you would be a good service option for the business.

The Ethics Lawyer

About Dear Ethics Lawyer

The twice-monthly "Dear Ethics Lawyer" column is part of a training regimen of the Legal Ethics Project, authored by [Mark Hinderks](#), former managing partner and counsel to an AmLaw 125 firm; Fellow, American College of Trial Lawyers; and speaker/author on professional responsibility for more than 25 years. Mark leads Stinson LLP's [Legal Ethics & Professional Responsibility](#) practice, offering advice and "second opinions" to lawyers and law firms, consulting and testifying expert service, training, mediation/arbitration and representation in malpractice litigation. The submission of questions for future columns is welcome: please send to mark.hinderks@stinson.com.

Discussion presented here is based on the ABA Model Rules of Professional Conduct, but the Model Rules are adopted in different and amended versions, and interpreted in different ways in various places. Always check the rules and authorities applicable in your relevant jurisdiction – the result may be completely different.