

Are New Jersey's Efforts at Curbing Attorney Mail Solicitations Missing the Real Issues?

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New Jersey legislators are currently considering statutes that would require attorneys to wait 30 days before contacting defendants or victims of accidents. The proposed bills reflect a response on the part of those seeking tort reform to curb what many deem to be activities that undermine the image of the legal profession. They may, in fact, be quite right.

But the proposed bills also raise some other interesting questions as well. As a legal marketing company, we are often pressed to determine the optimal way in which to promote our law firm clients' services. Because of the ethical considerations involved, this is a little trickier than it might be for other service businesses. Attorneys are limited in the manner in which they may promote their wares and reach out to potential clients. Hence, to limit their right to contact prospects based on information gleaned from public records is to restrict attorneys in ways most other service businesses are not. Marketing is really just about educating others regarding the benefits of a given product or service. Should not a law firm have the same right to "market" as any other business entity? Is not that part of their first amendment rights as well?

The answer is not a simple one. In directing mailings to individuals based on *public* records, many feel that attorneys are nonetheless also invading the *privacy* of these very same people. The problem is exacerbated when such mailings contain content that either misleads and/or misinforms the recipient. Yet, cannot the same be said about the scores of tacky attorney television commercials that promise, by word or implication, to obtain oodles of money on the injured person's behalf?

From our perspective, it would seem that the real question concerns not the medium employed as much as it does the content of the message. When attorneys and law firms are allowed to convey the benefits of their services in a manner that is informative, it is not just the law firm that is best served, but also the individual solicited. Armed with information, that person can make better, more educated decisions. Ambulance chasing only becomes ambulance chasing when it smacks of opportunism. This is true regardless of whether the medium employed is direct mail, television, radio, newspapers, billboards or online. And it's true regardless of whether the individual becomes a recipient of a message on the day of an accident, the next day, or on the 30th day thereafter. Hence, the legislative focus should be not on limiting attorneys' marketing alternatives, but rather on developing clearer, fairer guidelines as to what information about itself a law firm can rightly tout -- while still protecting against the vulnerability of the individual. When communications to defendants or accident victims provides valuable information

versus unsubstantiated hyperbole, it is doubtful whether these same individuals will feel quite as strongly that their rights to privacy have been violated.

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