

I Don't WANT TO HEAR IT

ABC LAW FIRM IS A NEW FIRM THAT FOCUSES EXCLUSIVELY ON REPRESENTING INDIVIDUALS IN PERSONAL INJURY AND CONSUMER-ORIENTED LITIGATION. The firm's website includes a solicitation to potential clients to contact the firm's individual attorneys directly through the website.

To avoid conflicts with existing and future clients, some partners suggest including a warning on the website that a prospective client should not send any confidential or privileged information. The prospective client would have to acknowledge the warning before any information could be sent to an attorney in the firm. They propose the following language:

WARNING: Do not send any information in any email through this website if you consider the information confidential or privileged. By submitting information by email in response to this website, you agree that the communication does not create a lawyer-client relationship between you and ABC Law Firm and its lawyers and that any information submitted is not confidential or privileged. You further acknowledge that, unless the law firm subsequently enters into a lawyer-client relationship with you, any information you provide will not be treated as confidential and any such information may be used against you and for the benefit of current or future clients of the law firm.

Other ABC lawyers object, saying that this stark and potentially intimidating language might drive prospective clients away and that, in any event, this information cannot be considered privileged and confidential until an actual attorney/client relationship has been established.

According to a 2015 Ethics Opinion, what is required of ABC when soliciting emails from potential clients on its website?

- A. ABC cannot use any information it receives from a prospective client through the solicitation on its website.
- B. ABC can use information it receives through the solicitation on its website if a prospective client acknowledges the proposed warning before sending any information.
- C. ABC can use information it receives through the solicitation on its website if a prospective client acknowledges the proposed warning before sending any information *and* if a reasonable lawyer would conclude that it would not "materially and significantly" prejudice the interests of the prospective client.
- D. ABC can use any information it receives through the solicitation on its website if no attorney/client relationship has been established.



ABOUT THE CENTER

The Texas Center for Legal Ethics was created by three former chief justices of the Supreme Court of Texas to educate lawyers about ethics and professionalism. Lawyers can access the Texas Disciplinary Rules of Professional Conduct, the Texas Lawyer's Creed, and a variety of other online ethics resources by computer or smart device at legalethictexas.com.

DISCLAIMER

The information contained in Ethics Question of the Month is intended to illustrate an ethics issue of general interest in the Texas legal community; it is not intended to provide ethics advice that applies regardless of particular facts. For specific legal ethics advice, readers are urged to consult the Texas Disciplinary Rules of Professional Conduct (including the official comments) and other authorities and/or a qualified legal ethics adviser.



ANSWER: Ethics Opinion 651 (2015) considered the issue of whether a warning like the one above is sufficient to allow a law firm to use confidential information received from a prospective client who first acknowledged the warning. The opinion first notes the duty of confidentiality to clients under Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct, but also observes that the rules provide that confidentiality does attach to some interactions before an attorney/client relationship is established, particularly when a prospective client has some reasonable expectation of confidentiality when providing the information.

While the opinion is careful to state that the rules do not *require* a warning, it does conclude that a warning and acknowledgement similar to the one included here would allow a law firm to use any information provided against the party who provided it after acknowledging the warning on the firm's website. The correct response is B. For more analysis, go to legalethictexas.com/ethics-question-of-the-month.