

Direct-Marketing Guidelines

There are degrees of acceptable conduct when marketing and advertising the legal services provided by a firm or practitioner; from the accepted practice of exchanging business cards to the unacceptable conduct of “ambulance-chasing” e.g. touting for potential clients in such places as hospitals, funeral homes or cemeteries.

It is for this reason that specific forms of firm promotion cannot be broadly prohibited as it may be an acceptable practice in one set of circumstances and unacceptable in another. What determines the acceptable/unacceptable distinction is determined by the individual promotion strategy and the conduct of the firm or practitioner in executing that strategy in a particular set of circumstances.

1. Direct-marketing (touting or solicitation for business) is the practice of a legal firm contacting members of the public seeking information as to whether they may require legal assistance without having had a previous solicitor/client relationship or any prior dealings with that person.
2. Direct marketing includes communication via telephone (“cold-calling”), in person and mail-out (letters, brochures and emails).
3. Firms or practitioners (including staff) engaged in any form of direct-marketing should comply with the *Legal Profession Act 2004*, *Professional Conduct and Practice Rules 2005*, National Privacy

Principles, Model Codes on Direct Marketing and any other relevant legislation including the *Spam Act 2003*, the *Trade Practices Act 1974* and the *Fair Trading Act 1999* or equivalent legislation.

4. Firms or practitioners engaged in direct-marketing must not use undue influence, coercion, or duress, or be involved in harassment or nuisance. Factors to be considered by the firm or practitioner when promoting the firm’s or practitioner’s services include:
 - (a) the prospective client’s sophistication regarding legal matters; and
 - (b) whether the physical, emotional and mental state of the person is such that the person is capable of exercising reasonable judgment in engaging a practitioner; and
 - (c) the situation and circumstances where the promotion is undertaken.
5. The principal of a law practice is required to monitor at all the times the conduct of staff (including non-legal staff) involved in the practice of direct-marketing. If the staff engaged in direct-marketing are not legally qualified they must not provide legal advice.
6. Firms or practitioners (including staff) engaged in direct-marketing must not be

- disparaging of other members of the profession and must ensure that the standards of conduct expected from members of the legal profession are upheld.
7. Where initial contact is made between the firm and the potential client, no confidential information should be sought regarding the specific details of the potential client's matter and no legal advice provided, until;
 - (a) a conflict check has been completed to ensure that the firm is able to act for the potential client; and
 - (b) the firm reasonably believes that the potential client is competent to employ the services of the firm; and
 - (c) the firm or practitioner is able to act with competence and diligence in undertaking legal services for the potential client; and
 - (d) an interview has been scheduled between the firm and the potential client.
 8. The firm or practitioner must ensure that an engagement letter and cost disclosure is fully explained to the client.
 9. All firms or practitioners (including staff) engaged in any form of direct-marketing must advise all potential clients that they have a 'cooling-off period' from the date of engagement consistent with the relevant provisions of the *Fair Trading Act 1999* or equivalent legislation.
 10. Firms or practitioners who engage in direct-marketing should have an internal complaints handling procedure that meets the standard set out in the Australian Standard for Complaints Handling.
 11. Only principals and staff directly employed by a firm or practitioner may engage in direct-marketing (no outsourcing of callers is permissible), on behalf of and at the direction of the principal or practitioner.
 12. The practice of direct-marketing may only be carried out between 9am and 6pm Monday to Friday (and not on public holidays).

How can we help you?

Visit the Ethics Department's website at: www.liv.asn.au/Practising-in-Victoria/Ethics.

These are guidelines only and do not have the force of law. A practitioner must comply with the *Legal Profession Act 2004* and the *Professional Conduct & Practice Rules 2005*.

Practitioners who engage in direct-marketing need to comply with Federal and State Laws.

Please refer to the Advertising Guidelines for further guidance.

To discuss concerns relating to direct-marketing, contact the Ethics Department on (03) 9607 9336.

Adopted by the Council of the Law Institute of Victoria on 16 September 2010.