

SUBJECT: CONSUMER PROTECTION – CHARITABLE SOLICITATIONS
ATTORNEY GENERAL – PUBLIC PROTECTION UNIT
ADOPTED PURSUANT TO 9 V.S.A. § 2479(b)

RULE CP 119
Effective Date: 11/23/99

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CP 119.01 Definitions

The following definitions apply to this rule:

(a) "Affiliate" means an entity owned or controlled in whole or in part by a paid fundraiser or by any officer, director or owner of the fundraiser.

(b) "Clear and conspicuous" means that the required disclosures are presented in such a manner, given their size, color, contrast and proximity to any related information, as to be readily noticed and understood by consumers. A disclosure is not clear and conspicuous if, among other things, it is ambiguous, or if it is obscured by the background against which it appears or by its location within a lengthy disclosure of non-material information. In addition:

(1) In the case of a written solicitation for a contribution containing the disclosures required by CP 119.07, "clear and conspicuous" also means that those disclosures must appear in a free-standing paragraph in the same document in which the request for a contribution appears, and that the text of the disclosures must be printed in regular (non-italicized, non-boldface) ten-point type, using New Times Roman, Arial or some other font of comparable legibility, with normal upper and lower-case letters and normal spacing between letters, words, and lines; except that the heading of the disclosure required by CP 119.07(b) must appear in bold 12-point type immediately above the rest of the disclosure.

(2) In the case of an oral communication, "clear and conspicuous" also means that the information is presented in a manner that a consumer will hear and understand, at a normal speed in the same tone and volume as used to make the solicitation.

(c) "Charity" means a "charitable organization" as that term is defined in 9 V.S.A. § 2471(2).

(d) "Contribution," "contributor," "fundraising campaign," "gross receipts" and "paid fundraiser" have the same meanings as are given to those terms in 9 V.S.A. §§ 2471(4), (5), (6), (7) and (8), respectively.

(e) "Goods and services" have the same meaning as is given to those terms in 9 V.S.A. § 2451a(b), and include, without limitation, publications, advertising in publications, and tickets to entertainment or similar events.

(f) "Solicit" and "solicitation" have the same meaning as is given to those terms in 9 V.S.A. § 2471(9), including, without limitation, invoices and similar documents for pledged donations. A person who, directly or through agents, helps develop a charitable organization's fundraising mailings, produces such mailings and sends them to prospective contributors is engaged in solicitation.

CP 119.02 Obligation to Comply with Rule

It shall constitute an unfair and deceptive act or practice in commerce under 9 V.S.A. § 2453 (a) for any person to violate any provision of this rule.

CP 119.03 Incorporation of Statutory Requirements by Reference

The disclosure requirements contained in this rule are in addition to those set forth in 9 V.S.A. ch. 63, subch. 2.

CP 119.04 Information on Notice of Solicitation

(a) In addition to information otherwise required by 9 V.S.A. § 2473, a paid fundraiser shall provide with the fundraiser's notice of solicitation:

(1) The name, residential address, and telephone number of the owner(s) of the paid fundraiser.

(2) The residential address of all individuals required to be identified under 9 V.S.A. §§ 2473(a)(1) (officers and directors of paid fundraiser) and 2473(a)(7) (members of immediate family of principals of paid fundraiser);

(3) The fax number and email address of the paid fundraiser, the name and title of the paid fundraiser's primary contact person, and contact information on the paid fundraiser's attorney, if any.

(4) The residential address and telephone number of all persons who will solicit during the fundraising campaign, including employees and agents of, and individuals in privity with, the paid fundraiser, and employees and agents of, and individuals in privity with, any individual or company with whom the fundraiser has contracted to solicit contributions during that campaign.

(5) A summary of the terms of the contract governing compensation to the fundraiser and payment of other fundraising expenses, as set out on the notice of solicitation form prescribed by the Office of Attorney General, including, but not limited to, the minimum percentage of contributions guaranteed to the charity, and how the paid fundraiser is to be compensated;

(6) The primary purpose(s) of the campaign, including, but not limited to, obtaining the names of new donors, recontacting prior donors, and raising funds for the charity's charitable programs;

(7) A description of the methods that will be used to solicit contributions, as set out on the notice of solicitation form prescribed by the Office of Attorney General;

(8) If contributions will be solicited in whole or in part by telephone, the name and residential address of the office manager or other person in charge at each location;

(9) Whether the campaign will include the sale of goods or services, and if so, a description of the goods or services;

(10) The nature, location, dates, parties, claims and outcome of any civil litigation, criminal prosecution or governmental investigation concerning the solicitation activity of, or alleging dishonesty or fraud on the part of, the fundraiser, its owners, officers, directors employees or solicitors, or any entity affiliated with the fundraiser by ownership or control in any jurisdiction occurring at any time within six years prior to the commencement of the fundraising campaign in Vermont;

(11) If any member of the immediate family of an officer, director or owner of the paid fundraiser, or any entity owned in whole or in part by an officer, director, or owner of the paid fundraiser, will receive any money in connection with the solicitation campaign, that person's or entity's telephone number, a description of the affiliation, and the nature of the work for which the person or entity will be compensated;

(12) The name and address of any bank or other depository institution where contributions solicited during the fundraising campaign will be deposited;

(13) All proper names which will be used to describe the fundraiser and the charity in the course of soliciting contributions;

- (14) A statement that the bond required by 9 V.S.A. § 2473(b) is in full force and effect;
- (15) The state of incorporation of the paid fundraiser; and
- (16) The name, address, telephone number and title of the primary contact person at the charity.

(b) The Attorney General may require the information required to be provided in the notice of solicitation under 9 V.S.A. § 2473 and this rule to be submitted to his office electronically, with an appropriate verification as to the accuracy of the information.

CP 119.05 Additional Information Following Filing of Notice of Solicitation

Upon written request of the Office of Attorney General, and within ten (10) days of receipt of such request, a paid fundraiser shall supplement the notice of solicitation by providing the following information in writing to the Office of Attorney General:

- (a) All available substantiation of any factual claims made by the fundraiser in the course of a fundraising campaign in Vermont; and
- (b) A copy of all telephone scripts and rebuttals, written materials, and other communications used or made in connection with soliciting contributions from residents of Vermont, and any recordings of such communications.

CP 119.06 Information on Financial Report

(a) In addition to the information required by 9 V.S.A. § 2477 to be included with a paid fundraiser's financial report, a paid fundraiser shall provide the following information with the fundraiser's financial report:

- (1) The total gross receipts from residents of Vermont, or, if this information cannot through due diligence be obtained by the paid fundraiser, then the paid fundraiser's best estimate of this figure, accompanied by an explanation of how the estimate was arrived at;
- (2) A description of how the gross receipts from residents of Vermont were distributed, including the total of the itemized expenses, commissions and other costs of the campaign, and the net amount paid to the charity for its charitable purposes after payment of all fundraising expenses, commissions and other costs; or, if this information cannot through due diligence be obtained by the paid fundraiser, then the paid fundraiser's best estimate of these figures, accompanied by an explanation of how the estimate was arrived at;

(3) The percentage of gross receipts from residents of Vermont that is made up by the total of fundraising expenses, commissions and other costs; or, if this information cannot through due diligence be obtained by the paid fundraiser, then the paid fundraiser's best estimate of this figure, accompanied by an explanation of how the estimate was arrived at;

(4) The percentage of gross receipts from residents of Vermont that is made up by the net amount paid to the charity for its charitable purposes after payment of all fundraising expenses, commissions and other costs; or, if this information cannot through due diligence be obtained by the paid fundraiser, then the paid fundraiser's best estimate of this figure, accompanied by an explanation of how the estimate was arrived at;

(5) The period covered by the financial report, the date, if any, that the campaign was terminated early, and whether the financial report is the final report for that campaign; and

(6) Whether the charity has reviewed the financial report, and if so, the name and title of the reviewer.

(b) For the purpose of subsection (a), above, if contributors are requested to send their contributions directly to the charity, and the charity then pays the paid fundraiser for conducting the campaign, the net amount paid to the charity is the total of contributions less the amount the charity pays to the paid fundraiser in connection with the campaign.

(c) The Attorney General may require the information required to be provided in the financial report under 9 V.S.A. § 2477 and this rule to be submitted to his office electronically, with an appropriate verification as to the accuracy of the information and as to the fact that a representative of the charity has reviewed the information.

CP 119.07 Disclosure of Availability of Information to the Public

(a) A paid fundraiser shall clearly and conspicuously disclose, to every person from whom it solicits a contribution, both orally, if the paid fundraiser is soliciting in whole or in part by telephone, and in writing, if the paid fundraiser is soliciting in whole or in part by means of writing, that the fundraiser is being paid by the charity on whose behalf the solicitation is being made.

(b) A paid fundraiser shall also clearly and conspicuously make an oral disclosure in substantially the following form to every person from whom it solicits a contribution in whole or in part by telephone. (The stated sources of information may be updated by the Office of the Vermont Attorney General from time to time.)

To find out how much of your contribution goes to the charity and how much to the paid fundraiser, call the Vermont Attorney General's Office at 1-800-649-2424, or log onto the Attorney General's website.

(c) In addition to any other disclosure required by this section, a paid fundraiser shall clearly and conspicuously provide a written disclosure in substantially the following form to every person from whom it solicits a contribution in whole or in part by means of writing. (The stated sources of information may be updated by the Office of the Vermont Attorney General from time to time.)

How Contributions Are Allocated Between Charity and Fundraiser

For information on how much of your contribution goes to the charity and how much to the paid fundraiser, contact the Vermont Consumer Assistance Program, Morrill Hall, UVM, Burlington, VT 05405, tel. 1-800-649-2424, or the Vermont Attorney General's Internet website, <http://www.atg.state.vt.us>.

CP 119.08 Prohibited Practices

It is an unfair and deceptive trade act and practice in commerce for a paid fundraiser or charity to:

(a) Misrepresent any material fact in the course of soliciting a contribution, including, but not limited to:

- (1) The identity or affiliation of the solicitor or paid fundraiser;
- (2) The purpose for which the contribution will be used, or for which any past contributions have been used;
- (3) The existence of any past contribution from the prospective contributor or any other person or persons; and
- (4) The location or address of the paid fundraiser or charity.

(b) Use a Vermont address (including a Vermont return address) in any solicitation unless (i) the charity actually maintains and staffs an office at that address, or (ii) any solicitation containing the Vermont address discloses, immediately proximate to the Vermont address and in a manner which is no less prominent than that of the most prominent statement of the Vermont address, both the address of the charity's actual headquarters and the fact that the Vermont address is a "mail drop," using this or a substantially similar term that clearly conveys the message that the Vermont address is solely that of a mail handling facility.

CP 119.09 Effective Date

The amendments to this rule shall become effective 30 days from the date the adopted rule is filed with the Secretary of State.