

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 87-007

December 18, 1987

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

[Not current-subsequent rule amendments to DR 2-101, eff. Jan. 1, 1993, Aug. 16, 1993, Jan. 1, 2000; DR 2-103, eff. July 1, 1996, Nov. 1, 1999; DR 2-104, eff. Dec. 1, 1995.]

SYLLABUS: A lawyer or law firm may ethically advertise and conduct a legal seminar.

OPINION: We have before us two separate but similar requests for our opinion on whether a lawyer or law firm may ethically advertise a legal seminar by direct mail to a targeted group and then conduct such a seminar. In one instance a law firm would advertise and promote attendance at its series of tax seminars by the purchase and use of the mailing list of the Ohio Society of CPA'S. In the other instance, a law firm would advertise a seminar on Chapter 13 of the Bankruptcy Code by writing persons who deal with parties likely to benefit from a Chapter 13 proceeding.

The promotion, or advertising of a legal seminar is permissible, provided the advertisement does not contain false, fraudulent, misleading, or deceptive statements or claims. Code of Professional Responsibility, DR 2-101 (A) (1986). The United States Supreme Court recently held that "[a]n attorney may not

be disciplined for soliciting legal business through printed advertising containing truthful and non-deceptive information and advice regarding the legal rights of potential clients." Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio, 471 U.S. 626 (1985). The disciplinary rules under Canon 2 were revised and amended, effective March 1, 1986, to bring the Code within the law as enunciated in Zauderer.

Although the Zauderer case involved newspaper advertising, we believe the opinion's analysis applies to direct mail advertising to potential clients as well. Unlike in-person solicitation, direct mail advertising does not put pressure on the recipient for an immediate yes-or-no answer. Furthermore, the possibility of over-reaching or the exercise of undue influence is no greater in direct mail advertising than it is in newspaper advertising. Therefore, we believe that advertising a legal seminar through direct mailing to targeted groups is a protected form of advertising under Ohio's Code of Professional Responsibility and the Zauderer case. We purposefully are not addressing the issue of advertising or solicitation by telephone, for this issue was the subject of a recent case which was dismissed by the Ohio Supreme Court and may be the subject of future disciplinary rulings. Joel Z. Hyatt, et. al. vs. J. Warren Bettis, Disciplinary Counsel, et. al., 33 Ohio St. 3d 123 (1987).

Next we turn to our analysis of the disciplinary rules and how they affect a lawyer's or law firm's right to conduct a legal seminar. Under DR 2-103(A) of the Code, a lawyer is proscribed from recommending himself, his partner, or associate to a non-lawyer who has not sought his advice regarding the

employment of a lawyer. Code of Professional Responsibility DR 2-103(A) (1986). Thus, a lawyer, while conducting a seminar, may not recommend himself or members of his firm for employment by those attending the seminar.

The portions of DR 2-104 which are relevant to this Opinion state:

(A) A lawyer who has given unsolicited advice to a layman that he should obtain counsel or take legal action shall not accept employment resulting from that advice, except that:

(1) A lawyer may accept employment by a close friend, relative, former client (if the advice is germane to the former employment), or one whom the lawyer reasonably believes to be a client.

(2) A lawyer may accept employment that results from his participation in activities designed to educate laymen to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services if such activities are conducted or sponsored by any of the offices or organizations enumerated in DR 2-103(D)(1) through (5), to the extent and under the conditions prescribed therein. .

..

(4) Without affecting his right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as he does not emphasize his own professional experience or reputation and does not undertake to give individual advice.

Code of Professional Responsibility DR 2-104 (A) (1986).

It is our opinion that a legal seminar, if properly conducted, does not amount to the giving of "unsolicited advice to a layman that he should obtain counsel or take legal action." Id. It is our belief that an educational seminar on legal topics which addresses the law as it applies to everyone is not individual, unsolicited advice within the meaning of DR 2-104. Therefore, as long as the lawyer conducting the seminar is not,

giving unsolicited advice that someone should obtain counsel or take legal action, or touting or recommending himself or members of his firm for employment by those in attendance then, the lawyer may ethically conduct a legal seminar without the sponsorship or approval of an organization listed in DR 2-103 (D) (1)-(4).

In a 1981 opinion, the Ohio State Bar Association Legal Ethics and Professional Conduct Committee stated that a law firm could not sponsor a legal education seminar open to non-clients of the firm. OSBA Op. 36 (1981). In light of the recent changes in the disciplinary rules under Canon 2 of the Code, as well as the Zauderer case, we felt it necessary to deviate from the OSBA opinion.

The OSBA opinion asserts that Ohio's EC 2-2 requires sponsorship of seminars by "a bar association, school or other responsible public or private organization." OSBA Op. 36 (1981) citing ABA Inf. Op. 840 (1965). We do not agree. Ohio's EC 2-2 states:

[t]he legal profession should assist laymen to recognize legal problems because such problems may not be self-revealing and often are not timely noticed. Therefore, lawyers acting under proper auspices should encourage and participate in educational and public relations programs concerning our legal system with particular reference to legal problems that frequently arise . . . " (Emphasis added.)

Ohio, unlike the ABA, has not amended their version of EC 2-2 to exclude the language "acting under proper auspices." The ABA eliminated that language as a result of the landmark decision of Bates v. State Bar of Arizona, 433 U.S. 350 (1977) which afforded constitutional protection to lawyers who advertise.

Again, we are not of the opinion that the Code prohibits a lawyer or law firm from conducting its own legal educational seminar. This is especially true in light of the Zauderer decision. As long as the lawyer's or law firm's seminar is motivated by a desire to benefit the public and does not amount to in-person solicitation or recommendation of employment, we believe it is permissible even though a strict interpretation of the Code might indicate otherwise.

In conclusion, it is our opinion, and you are so advised, that a lawyer or law firm may ethically promote a legal seminar through printed advertising provided the advertisement does not contain false, fraudulent, misleading or deceptive statements or claims. Furthermore, a lawyer or law firm may ethically conduct a legal seminar provided the lawyer does not tout or recommend himself or his law firm for employment to those attending the seminar. In other words, the seminar should not be used as a forum for solicitation or client development.

This is an informal, non-binding advisory opinion, based upon the facts as presented and limited to questions arising under the Code of Professional Responsibility.

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Secretary, Board of Commissioners
on Grievances and Discipline