

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 88-27

Issued December 16, 1988

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]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 and Aug. 16, 1993; DR 2-103, eff. Jul. 1, 1996.]

SYLLABUS: A lawyer is permitted to advertise in the Talking Yellow Pages.

OPINION: We have before us your request for an opinion on whether an attorney may advertise in the Talking Yellow Pages (TYP). The TYP is a service whereby a consumer telephones the TYP's representative and asks for the names of persons providing a particular type of service in a specific geographic area. The computer will pull up six names by random selection and show them on the screen in groups of two.

According to your request letter, representatives of the TYP have solicited attorneys to subscribe as providers with this listing service. The TYP would charge a flat rate per month for the listing.

The TYP's personnel have represented to you that they will not recommend or endorse the services of particular attorneys. The subscribing attorneys would have to indicate those areas of practice for which they are making themselves available to the public. A consumer would be given the names of attorneys who are in close geographic proximity and who are listed as being available to practice in the legal area which the consumer has requested. As your letter indicates, if an insufficient number of subscribing attorneys are listed with the given criteria, the operator would give the name of non-subscribing attorneys to the consumer.

In our opinion, under DR 2-101(B), a lawyer is permitted to advertise in the Talking Yellow Pages. DR 2-101(B) states that,

[i]n order to facilitate the process of informed selection of a lawyer by potential consumers of legal services, a lawyer may publish or broadcast, subject to DR 2-102 through DR 2-105, information in print media, in written or printed material distributed to consumers through the mail or otherwise; or over radio or television...

We agree that the TYP service “does not exactly fit into any of the sanctioned classifications of DR 2-101(B)...” Arizona State Bar Committee on Rules and Professional Conduct, Op. 84-13. However, we assert that given the recent liberalization regarding lawyer advertising by the United States Supreme Court, advertising in the Talking Yellow Pages should be permitted. See, e.g., Shapero v. Kentucky Bar Association, 56 U.S.L.W. 4532, 4 Law. Man. Prof. Conduct 180 (1988).

As a reminder, all forms of lawyer advertising must not include any false, fraudulent, misleading, or deceptive statements or claims. Code of Professional Responsibility, DR 2-101(A). This would include advertising in the Talking Yellow Pages.

Arguments have been made that it is unethical, under DR 2-103(C), for a lawyer to subscribe to the Talking Yellow Pages. See, e.g., Kentucky Bar Association Ethics and Unauthorized Practice Committee Op. E-309. Disciplinary Rule 2-103(C) prohibits lawyer's from requesting a person or organization to recommend or promote the use of his or her services unless the lawyer referral service is sponsored by a bar association.

We believe DR 2-103(C) should not prohibit a lawyer from advertising in the TYP. As stated in your request letter, the TYP will not recommend or endorse the services of particular attorneys. Moreover, although technically the TYP service could be considered a referral service, it is primarily a form of advertising. In this regard, DR 2-103(E) states that nothing in DR 2-103 “prohibits a lawyer from accepting employment received in response to his own advertising, provided such advertising is in compliance with DR 2-101.” Another factor to consider is that, the computer randomly pulls up the name of attorneys, thereby eliminating the risk involved in a person determining which attorneys names to give.

Of course, the TYP’s representative should not offer and should, if asked, decline to give any additional comments regarding a subscribing attorney. They may also be well advised to include a disclaimer that they are not recommending or endorsing any particular attorney. In addition, the attorney should maintain a copy of all advertisements pursuant to DR 2-101(D). Arizona State Bar Committee on Rules and Professional Conduct, Op. 84-13. “The Talking Yellow Pages should also maintain a copy of the listing that could serve as an independent verification.” Id.

There are many constitutional issues involved in your request which we are not authorized to address.

In conclusion, it is our opinion and you are so advised that an attorney may ethically subscribe to the Talking Yellow Pages.

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