

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 2006-4

Issued April 7, 2006

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

SYLLABUS: In announcing the opening of a law practice, an attorney may send an announcement card and a biography to members of the bar, business entities, and others. If the attorney wishes to announce the opening of a law practice by sending a personalized letter and a biography to fellow members of the bar, the letter is not subject to the requirements for direct mail solicitation in DR 2-101(F)(2). But, if an attorney wishes to announce the opening of a law practice by sending a personalized letter and a biography to business entities or others that might need legal services in the areas of law in which the attorney will practice, the letter is subject to the requirements for direct mail solicitation in DR 2-101(F)(2).

OPINION: This opinion addresses a question regarding an attorney's use of a personalized letter to announce the opening of a law practice.

In announcing the opening of a law practice, is it proper for an attorney to send a personalized letter and a biography to members of the bar and to business entities that might need legal services in the areas of law in which the attorney will practice? If a personalized letter may be used to announce the opening of a law practice must the letter comply with the DR 2-101(F)(2) requirements for targeted direct mail solicitation?

Announcement of a new or changed law practice is addressed in DR 2-102(A)(2) of the Ohio Code of Professional Responsibility.

DR 2-102(A) A lawyer or law firm may use or participate in the use of professional cards, professional announcement cards, office signs, letterheads, or similar professional notices or devices that are in dignified form and comply with the following:

(2) A brief professional announcement card stating new or changed associations or addresses, change of firm name, sale of a law practice, or similar matters pertaining to the professional offices of a lawyer or law firm. It shall not state the nature of the practice except as permitted under DR 2-105.

Dissemination of biographical and informational data regarding an attorney and a law firm is addressed in DR 2-101(B)(3).

DR 2-101(B) Subject to the limitations contained in these rules:

- (3) Brochures or pamphlets containing biographical and informational data that is acceptable under these rules may be disseminated directly to clients, members of the bar, or others.

Information presumed to be informational and acceptable for dissemination is identified and listed in DR 2-101(D)(1)-(14) and includes such things as schools attended, teaching positions held, authored publications, memberships in bar associations and professional organizations, etc.

Thus, attorneys are given a wide berth to disseminate a brief announcement card regarding a new or changed law practice and to disseminate biographical and informational data regarding an attorney or a law firm.

A wide berth is not given to sending personalized letters. When a personalized letter (a letter addressed specifically to a person or business by name) is sent to announce a law practice or is sent along with other information such as an announcement card or a biography the application of targeted direct mail solicitation restrictions must be considered.

The requirements for targeted direct mail solicitation are in DR 2-101(F)(2).

DR 2-101(F)(2) A lawyer or law firm may engage in written solicitation by direct mail addressed to persons or groups of persons who may be in need of specific legal service by reason of a circumstance, condition, or occurrence that is known or, upon reasonable inquiry, could be known to the soliciting lawyer or law firm, provided the letter of solicitation:

- (a) Discloses accurately and fully the manner in which the lawyer or law firm became aware of and verified the identity and specific legal need of the addressee;
- (b) Disclaims any prior acquaintance or contact with the addressee and avoids any personalization in approach unless the facts are otherwise;
- (c) Disclaims or refrains from expressing any predetermined evaluation of the merits of the addressee's case;
- (d) Conforms to standards required by these rules with respect to information acceptable for inclusion in media advertising by lawyers and law firms;

(e) Includes in its text and on the envelope in which mailed, in red ink and in type no smaller than 10 point, the recital -"ADVERTISEMENT ONLY."

(3) The provisions of division (F)(2) of this rule shall not apply to organizations defined in DR 2-103(D)(1).

Other restrictions on targeted direct mail solicitation are found in DR 2-101(F)(4) (addressing solicitation to parties named defendants in civil actions) and DR 2-101(H)(1) (addressing solicitation regarding potential claims for personal injury and wrongful death).

Announcing the opening of a law practice through a personalized letter to business entities who may need legal services in the attorneys areas of legal practice triggers the requirements for direct mail solicitation in DR 2-101(F)(2). It is in essence a solicitation by direct mail addressed to persons or groups of persons who may be in need of specific legal service by reason of a circumstance, condition, or occurrence that is known or, upon reasonable inquiry, could be known to the soliciting lawyer or law firm, provided the letter of solicitation. The lawyer is not sending a general mailing to all businesses, if so he or she would not use a personalized letter. The attorney is targeting businesses needing legal services in areas that the attorney practices.

Announcing the opening of a law practice through a personalized letter to members of the bar does not trigger the requirements for direct mail solicitation in DR 2-101(F)(2). The letter is going to a group who practices law, not a group in need of legal services.

Thus, the Board advises as follows. In announcing the opening of a law practice, an attorney may send an announcement card and a biography to members of the bar, business entities, and others. If the attorney wishes to announce the opening of a law practice by sending a personalized letter and a biography to fellow members of the bar, the letter is not subject to the requirements for direct mail solicitation in DR 2-101(F)(2). But, if an attorney wishes to announce the opening of a law practice by sending a personalized letter and a biography to business entities or others that might need legal services in the areas of law in which the attorney will practice, the letter is subject to the requirements for direct mail solicitation in DR 2-101(F)(2).

Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Code of Professional Responsibility, the Code of Judicial Conduct, and the Attorney's Oath of Office.

