

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 92-3

Issued February 14, 1992

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]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. January 1, 1993 and August 16, 1993.]

SYLLABUS: The Code of Professional Responsibility does not preclude Ohio lawyers from participating in televised group legal advertising. However, there are ethical concerns with regard to participation in some types of programs, particularly programs which go beyond the ministerial function of placing callers in contact with participating attorneys. Many of the ethical concerns related to improper screening and referral are eliminated in programs in which participating attorneys are assigned market areas based on zip codes, consumers are given an 800 number to call, and the calls originating from assigned market areas are electronically switched to the participating attorney's office.

OPINION: This opinion responds to an inquiry regarding the propriety of participating in televised group advertising of legal services from companies that promote and provide such advertising. The requester specifically inquires about a television advertising program in which designated marketing areas based on zip codes are assigned to participating attorneys. When a consumer calls the 800 number on a commercial, the call originating from an assigned market area is electronically switched to the attorney's office, but is never routed by humans.

Television advertising by attorneys is not prohibited by the Code of Professional Responsibility, but is regulated by several rules within the Code. Disciplinary Rule 2-101 (B) authorizes a lawyer to publish or broadcast, subject to Disciplinary Rules 2-102 through 2-105, information over the radio or television, but requires that the information comply with Disciplinary Rule 2-101 (A) which prohibits the use of any form of communication containing a false, fraudulent, misleading, or deceptive statement or claim. Disciplinary Rule 2-101 (D) requires that "[i]f the advertisement is communicated to the public over radio or television, it shall be prerecorded, approved for broadcast by the lawyer, and a recording of the actual transmission shall be retained by the lawyer."

Disciplinary Rules 2-101 (E) and (G) govern the advertising of fees and are applicable to television broadcasts. Disciplinary Rule 2-101 (E) states that “[i]f a lawyer advertises a fee for a service, such service must be rendered for no more than the fee advertised.” Disciplinary Rule 2-101 (G) provides that “[u]nless otherwise specified, if a lawyer broadcasts any fee information the lawyer shall be bound by any representation made therein for a period of not less than 30 days after such broadcast.” Disciplinary Rule 2-101 (H) contains a caveat that “[a] lawyer shall not directly or indirectly compensate or give any thing of value to representatives of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item.”

Within the last several years, Ohio attorneys have been contacted by companies that market and provide group advertising of legal services. Many of these programs utilize television advertising to generate potential clients for attorneys who pay to participate.

In the past, this Board advised that the Code of Professional Responsibility contains no specific provision precluding Ohio lawyers from participating in group legal advertising. Ohio Sup.Ct, Bd of Comm’rs on Grievances and Discipline, Op. 89-30 (1989). The Board acknowledged that group legal advertising is a concept that facilitates the process of informed selection of a lawyer by potential consumers of legal services. Id.

In Opinion 89-30, the Board addressed the propriety of television advertising through the “Injury Helpline.” The opinion described the proposed advertising as consisting of thirty second commercials that would encourage injured persons to call a toll free number. Toll free operators would give callers the name of the attorney who had purchased the exclusive rights to receive all telephone calls from certain geographic areas defined by zip code. The commercials would include the written statement “Advertisement Paid for By Sponsoring Attorneys. Not a Lawyer Referral Service.” Ohio Sup.Ct, Bd. of Comm’rs on Grievances and Discipline Op. 89-30 (1989). The Board specifically noted that the proposed advertisement was not a referral service. The Board advised that Ohio lawyers may participate in group legal advertisements on television wherein calls are routed from viewers to lawyers who pay for exclusive rights to receive calls from specific geographic areas, but that the advertisements must not contain any false, fraudulent, misleading or deceptive statements or claims as defined in Disciplinary Rule 2-101 (C). The Board suggested an additional safeguard would be for the operator to inform the caller that it is not a referral or endorsement and that the attorney had paid for the advertisement. Id.

The Board has also addressed ethical concerns with regard to some types of advertising programs which go beyond the mere function of placing callers in contact with participating attorneys. Ohio Sup.Ct, Bd of Comm'rs on Grievances and Discipline, Op. 91-7 (1991). In Opinion 91-7 the Board advised that

[a]n attorney should not participate in a lawyer referral service that provides joint advertising of legal services to generate potential clients who are then screened and referred to attorneys who have paid for the service. Participation is unethical because the attorney compensates the services in violation of DR 2-103 (B) and such referral services are not approved organizations under DR 2-103 (D). It is also unethical if the participating attorney has not approved the advertisement prior to broadcast pursuant to DR 2-101 (D) and if the communication is misleading in violation of DR 2-101 (A).

The Board reaffirms the advice contained within Opinion 91-7 and Opinion 89-30.

In conclusion, the Code of Professional Responsibility does not preclude Ohio lawyers from participating in televised group legal advertising. However, there are ethical concerns with regard to participation in some types of programs, particularly programs which go beyond the ministerial function of placing callers in contact with participating attorneys. Many of the ethical concerns related to improper screening and referral are eliminated in programs in which participating attorneys are assigned market areas based on zip codes, consumers are given an 800 number to call, and the calls originating from assigned market areas are electronically switched to the participating attorney's office.

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.