

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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## **OPINION 92-20**

Issued December 4, 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*[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]*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, DR 2-101(H)(1), eff. Nov. 1, 1995.]*

**SYLLABUS:** A law firm may mail a newsletter to an untargeted broad group of people--clients, friends, local businesses, and professional and governmental offices without including a 10 point red ink recital "Advertisement Only" in the text of the newsletter and on the envelope. However, if a newsletter is sent to a targeted person or groups of persons--those who maybe in need of specific legal services 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, effective January 1, 1993, it must comply with Disciplinary Rule 2-101(F) (2) and include a 10 point red ink recital "Advertisement Only" in the text of the newsletter and on the envelope.

A newsletter may contain information on legal and non-legal topics as well as biographical information regarding the law firm, its lawyers, and its non-lawyer staff. However, the content of a newsletter must meet the requirements of Disciplinary Rules 2-101, 2-103, 2-104, and 2-105.

A lawyer or law firm may send a cover letter along with the first newsletters provided that the letter complies with Disciplinary Rules 2-101, 2-103, 2-104, and 2-105.

**OPINION:** This opinion addresses questions regarding newsletters.

1. Is it proper for a law firm to mail a newsletter to clients, friends, local businesses, and professional and governmental offices without including a 10 point red ink recital "Advertisement Only" in the text of the newsletter and on the envelope?
2. What content may be included in a newsletter?
3. Is it proper for a lawyer to mail a personalized cover letter along with the first newsletter, briefly describing the newsletter and its purpose and asking the recipient to contact the firm if the recipient has questions concerning a topic addressed in the newsletter or any other legal matter?

General

Newsletters are a form of publicity and are therefore governed by Disciplinary Rule 2-101 of Ohio's Code of Professional Responsibility. Disciplinary Rule 2-101 was recently amended effective January 1, 1993. This opinion will interpret the amended rule. For a review of past opinions under former Disciplinary Rule 2-101 see Ohio SupCt Bd of Comm'rs on Grievances and Discipline, Op. 83-022 (1988) (may send newsletters to non-clients provided that the newsletters do not contain any false, fraudulent, misleading or deceptive statements or claims) and Op. 88-001 (1988) (may send newsletters to established clients on general points of law as long as such newsletters do not contain false, fraudulent, misleading, or deceptive statements or claims).

Question 1

A newsletter is written communication that is both informational and promotional. Disciplinary Rule 2-101 (B) (1) permits advertisement of services through written communication.

DR 2-101 (B) Subject to the limitations contained in these rules: (1) A lawyer or law firm may advertise services through newspapers, periodicals, trade journals, "shoppers," and similar print media, outdoor advertising, radio and television, and written communication.

Disciplinary Rule 2-101 (B) (3) allows brochures or pamphlets containing biographical and informational data to be disseminated directly to clients, members of the bar, or others.

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.

Thus, under Disciplinary Rule 2-101 (B) (1) and (3) it would be proper to disseminate a written newsletter containing biographical and informational data to clients and non-clients, subject to any limitations contained within Disciplinary Rule 2-101. The Board has been asked to consider whether the limitations in Disciplinary Rule 2-101 (F) (2) as to direct mail solicitation apply to a law firm's newsletter mailed to clients, friends, local businesses, and professional and governmental offices.

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 of 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."

Disciplinary Rule 2-101 (F) (2) allows the free flow of information regarding legal services, but places conditions upon communications with susceptible persons. The language of the rule limits its scope to direct mail addressed to targeted persons or groups of persons--those who may be in need of specific legal services by reason of a circumstance, condition of occurrence that is known or, upon reasonable inquiry, could be known to the soliciting lawyer or law firm. For a discussion of constitutional issues as to targeted direct mailing see Shapiro v. Kentucky Bar Ass'n, 486 U.S. 466 (1988).

The proposed mailing is to an untargeted broad group of people who would have a general interest in receiving the information--clients, friends, local businesses, and professional and governmental offices. Although the broad group of people could include persons in need of legal services, it is not a targeted group as described within the rule--a group 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.

Based on the specific language of the rule, this Board concludes that the restrictions within Disciplinary Rule 2-101 (F) (2) do not apply to a law firm's newsletter to an untargeted broad group of people--clients, friends, local businesses, and professional and governmental offices. Therefore, this Board advises that a law firm may mail a newsletter to an untargeted broad group of people--clients, friends, local businesses, and professional and governmental offices without including a 10 point red ink recital "Advertisement Only" in the text of the newsletter and on the

envelope. However, if a newsletter is sent to a targeted person or groups of persons--those 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, effective January 1, 1993 it must comply with Disciplinary Rule 2-102 (F) (2) and include a 10 point red ink recital "Advertisement Only" in the text of the newsletter and on the envelope.

Question 2

The Board declines to set forth an inclusive list of what information a newsletter may contain. Nor, will the Board attempt to offer its preapproval of the contents of a newsletter. The rules governing the practice of law in Ohio do not authorize a procedure for preapproval of legal advertisements. Each lawyer or law firm must make the determination of what is proper through application of the disciplinary rules and case law.

Generally speaking, a newsletter may contain information on legal and non-legal topics as well as biographical information regarding the law firm, its lawyers, and its non-lawyer staff. The content of a newsletter must meet the requirements of Disciplinary Rule 2-101 (A), (C), (D), and (E).

DR 2-101 (A) A lawyer shall not, on his or her own behalf or that of a partner, associate, or other lawyer affiliated with the lawyer or the lawyer's firm, use, or participate in the use of, any form of public communication, including direct mail solicitation that:

- (1) Contains any false, fraudulent, misleading, deceptive, self-laudatory, or unfair statement;
- (2) Seeks employment in connection with matters in which the lawyer or law firm does not intend to actively participate in the presentation, but that the lawyer or law firm intends to refer to other counsel, except that this provision shall not apply to organizations defined in DR 2-103 (D) (1);
- (3) Contains any testimonial of past or present clients pertaining to the lawyer's capability;
- (4) Contains any claim that is not verifiable;
- (5) Contains characterizations of rates or fees chargeable by the lawyer or law firm, such as "cut-rate," "lowest," "giveaway," "below cost," "discount," and "special;" however, use of characterizations of rates or fees such as "reasonable" and "moderate" is acceptable.

Disciplinary Rule 2-101(C) defines false or misleading communication. Disciplinary Rule 2-101(D) establishes a list of information regarding lawyers and law firms that will be presumed to be informational. Disciplinary Rule 2-102 (E) (1) and (2) set forth rules as to fee information. The content of a newsletter must also comply with Disciplinary Rule 2-103 regarding recommendation of professional employment, Disciplinary Rule 2-104 regarding suggestion of need of legal services, and Disciplinary Rule 2-105 regarding limitations of practice.

In conclusion, this Board advises that a newsletter may contain information on legal and non-legal topics as well as biographical information regarding the law firm, its lawyers, and its non-lawyer staff. However, the content of a newsletter must meet the requirements of Disciplinary Rule 2-101, 2-103, 2-104, and 2-105.

### Question 3

A letter is a form of written communication. The Board advises that there is nothing within the rules that would prohibit a lawyer or law firm from sending a personalized cover letter along with the first newsletter, provided that the letter complies with Disciplinary Rule 2-101, 2-103, 2-104, and 2-105. Within the personalized cover letter, the lawyer could briefly describe the newsletter and its purpose and ask the recipient to contact the firm if the recipient had questions concerning a topic addressed in the newsletter or any other legal matters. If the letter is directed to a person 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, the restrictions on direct mail solicitation within Disciplinary Rule 2-101 (F) (2) would apply.

**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.**