

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 88-3

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Withdrawn by Adv. Op. 2023-02

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]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

SYLLABUS: Providing the communication does not contain a false, fraudulent, misleading, or deceptive statement or claim, a legal aid lawyer may ethically solicit indigent clients known to need legal representation through direct mail solicitation only. This opinion is limited to situations where the attorney receives no fee or remuneration from his or her client.

OPINION: We have before us your request for an informal advisory opinion regarding the propriety of a legal aid lawyer soliciting defendants for representation on eviction actions after an eviction has been filed. In your request you indicate that you intend to send defendants a letter offering representation or to solicit them personally. Your request also states that you would only represent legal aid eligible clients and that there would be no fee involved.

In regard to publicity and solicitation DR 2-101(B) states:

[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. The information disclosed by the lawyer in such publication or broadcast shall comply with DR 2-101(A). Code of Professional Responsibility DR 2-101(B).

This rule, as recently amended, allows attorneys to advertise their services subject to the following limitations: “a lawyer shall not use, or participate in the use of any form of

communication containing a false, fraudulent, misleading, or deceptive statement or claim.” Code of Professional Responsibility DR 2-101(A).

Thus, direct mail solicitation by a legal aid lawyer is permitted under the Code provided the communication does not contain a false, fraudulent, misleading, or deceptive statement or claim. The question then becomes, do these rules allow a legal aid lawyer to solicit clients, through direct mailings, who have an identified present need for legal services? We believe they do.

“A basic tenet of the professional responsibility of lawyers is that every person in our society should have ready access to the independent professional services of a lawyer of integrity and competence.” Code of Professional Responsibility EC 1-1. Furthermore, “the need of members of the public for legal services is met only if they recognize their legal problems, appreciate the importance of seeking assistance, and are able to obtain the services of acceptable legal counsel. Hence, important functions of the legal profession are to recognize their legal problems, to facilitate the process of intelligent selection of lawyers and to assist in making legal services fully available.” Code of Professional Responsibility EC 2-1.

The direct mail solicitation you contemplate as a legal aid lawyer seems designed to: assist indigents in recognizing their legal problems, making legal services available, and facilitating the process of selection-of a lawyer. In 1935, when solicitation of business by attorneys was strictly prohibited, the ABA Committee on Professional Ethics issued an opinion that stated, “offering publicly to render legal services without charge to citizens who are unable to pay for them is not unethical.” The Committee pointed out that, the Canon which proscribed solicitation of business had to do with “the effort to obtain remunerative business -- the endeavor to increase the lawyer's practice with the end in view of enlarging his income” and was “never aimed at a situation in which a group of lawyers announce that they are willing to devote some of their time and energy to the interest of indigent citizens whose constitutional rights are believed to be infringed.” ABA Committee on Professional Ethics Formal Opinion No. 148 (1935). Given the fact that advertising by lawyers is no longer proscribed reinforces this ABA opinion.

“Those persons who are unable to pay for legal services should be provided needed services.” Code of Professional Responsibility EC 8-3. Sending out direct mail advertising to indigent persons in need of specific legal services will assist the legal profession in carrying out its duty to render services to those who cannot afford to pay for such services.

A legal aid lawyer using direct mail advertising must scrupulously adhere to the relevant Code provisions regarding misleading, deceptive, false and fraudulent advertising. See, e.g., Maryland State Bar Assn. Committee on Ethics, Op. No. 85-83. We also assert that the legal aid lawyer who utilizes direct mail advertising must avoid asserting undue influence over the potential client especially when such advertising is directed to a person known to need specific legal services. Such a person is potentially susceptible to overreaching.

In regard to you personally soliciting a defendant, it is our opinion that such activity would be in violation of DR 2-103 which states: “a lawyer shall not recommend employment, ... of himself, ... to a non-lawyer who has not sought his advice regarding employment of a lawyer, except as provided in DR 2-101.” Code of Professional Responsibility DR 2-103(A). In-person solicitation is not a permitted form of advertising under DR 2-101(B). See also, Ohralik v. Ohio State Bar Assn., 436 U.S. 447 (1978); Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626 (1985).

In conclusion, it is our opinion and you are so advised that, a legal aid lawyer may ethically solicit indigent clients known to need specific legal services through the use of direct mail advertising only. See, Ohralik v. Ohio State Bar Assn., 436 U.S. 447, 455 (1978). This advisory opinion only addresses targeted direct mail solicitation by the legal aid attorney who receives no fee or remuneration from his or her client.

THIS IS AN INFORMAL, NON-BINDING ADVISORY OPINION, BASED UPON THE FACTS AS PRESENTED AND LIMITED TO THE SITUATION WHERE A LEGAL AID LAWYER SEEKS TO REPRESENT AN INDIGENT PERSON ELIGIBLE FOR LEGAL AID, AND RECEIVES NO FEE OR REMUNERATION FROM THE CLIENT.