

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 88-022

Issued August 12, 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[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]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. See Op. 92-20.]

SYLLABUS: A lawyer or law firm may ethically send newsletters to non-clients provided that the newsletters do not contain any false, fraudulent, misleading or deceptive statements or claims.

OPINION: We have before us your request for an advisory opinion on whether it is permissible for your law firm to send a newsletter to companies or individuals who are not currently clients of your firm.

In our Opinion 88-001 we stated that law firms could send out newsletters to established clients on general points of law as long as the newsletters did not contain false, fraudulent, misleading or deceptive statements or claims. Now we are being asked to extend that proposition to allow law firms to send newsletters to non-clients.

Newsletters, for purposes of complying with the Code of Professional Responsibility, are a form of advertising. Therefore, newsletters, like all forms of lawyer advertising, may not contain any false, fraudulent, misleading or deceptive statements or claims. Code of Professional Responsibility, DR 2-101(A). What constitutes a false or misleading communication is set forth in DR 2-101(C) which states:

[a] communication is false or misleading if it: (1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading; (2) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Code of Professional Responsibility or other law; or (3) is subjectively self-laudatory, or compares a lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

A lawyer's justification in sending newsletters to non-clients is supported by a recent United States Supreme Court decision which held that a state may not prohibit lawyers from soliciting business for pecuniary gain by sending truthful and nondeceptive letters to potential clients known to face particular legal problems. Shapiro v. Kentucky Bar Association, No. 87-16 (June 13, 1988). If a lawyer may send targeted direct mail solicitations to persons known to need legal services, then certainly sending newsletters to non-clients is permitted.

In conclusion, it is our opinion and you are so advised that a law firm may ethically send out newsletters to non-clients provided they do not contain any false, fraudulent, misleading or deceptive statements or claims.

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

James W. Mason, Esq.
Secretary, Board of
Commissioners