

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 2004-9 Issued October 8, 2004

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]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: An attorney may send a letter to a chiropractor asking for the opportunity to meet to provide information about the attorney's legal services. But, an attorney may not enter an agreement with the chiropractor for mutual referral of clients; may not reward or compensate a chiropractor for a referral; and may not request that the chiropractor recommend the attorney's legal services to the chiropractor's clients. This does not mean an attorney is prohibited from providing legal services to a chiropractor's patient who learned of the attorney through the chiropractor. And, it does not mean an attorney is prohibited from suggesting that a client seek help from a chiropractor. It means that upon acquainting each other as to their professional services, the attorney and the chiropractor exercise their independent professional judgments. For example, if an attorney believes it is in the client's best interest to see a chiropractor and the client needs guidance in choosing a chiropractor, the attorney may provide several names of chiropractors so that the client may freely choose. If a chiropractor's patient needs legal services, the client should come to an attorney voluntarily having exercised free choice, not as a condition imposed by the chiropractor. The exercise of an attorney's professional independent judgment on behalf of a client demands that there be no mutual referral agreements, no rewards or compensation for recommendations or referrals, and no improper self-recommendation of legal services. Disinterested and informed recommendations are best for a client. An attorney and a chiropractor should not engage in any conduct involving or implying there is a business relationship between the two.

OPINION: This opinion addresses an attorney's contact with a chiropractor to discuss their professional services.

Is it proper for an attorney to send a letter to a chiropractor asking for the opportunity to meet to discuss potential client opportunities for the attorney and the chiropractor?

An attorney, who represents injured workers with workers' compensation claims, wants to send a letter to chiropractors who practice in the same geographic area as the attorney. The purpose of the letter is to introduce the attorney, summarize

the attorney's education and law practice, and ask for an opportunity to meet with the chiropractor to discuss potential client opportunities. The letter would inform the chiropractor to call the attorney's office if he had questions or would like to meet with the attorney. The attorney would enclose a professional business card and brochure of the law firm in the envelope along with the letter.

Ohio attorneys have wide latitude to advertise their legal services in compliance with DR 2-101 of the Ohio Code of Professional Responsibility. Ohio attorneys may advertise legal services "through newspapers, periodicals, trade journals, 'shoppers,' and similar print media, outdoor advertising, radio and television, and written communication" pursuant to DR 2-101(B)(1). Ohio attorneys may advertise in telephone and city directories pursuant to DR 2-101(B)(2)(a) and (b). Ohio attorneys may be included in reputable law lists and law directories pursuant to DR 2-101(B)(2)(c). Ohio attorneys may advertise legal services through brochures and pamphlets disseminated to clients, members of the bar, or others pursuant to DR 2-101(B)(3). Ohio attorneys may engage in written solicitation of legal business to persons who may be in need of legal services pursuant to DR 2-101(F)(2), but subject to the restrictions in DR 2-101(F)(4) and DR 2-101(H)(1). Ohio attorneys, pursuant to DR 2-102(A), may use professional cards, professional announcement cards, office signs, letterhead, or similar professional notices.

There are limitations though in making one's legal services known. Ohio attorneys must not improperly recommend themselves to non-lawyers who have not sought their advice, compensate others for referrals, request that others recommend their services, or accept employment resulting from their unsolicited advice to a non-lawyer to obtain counsel or take legal action. These restrictions are in DR 2-103(A), DR 2-103(B), DR 2-103(C), and DR 2-104(A).

Recommending employment of self

DR 2-103(A) A lawyer shall not recommend employment, as a private practitioner, of himself or herself, his or her partner, or associate to a non-lawyer who has not sought the lawyer's advice regarding employment of a lawyer, except as provided in DR 2-101.

Compensating others for a recommendation/referral

DR 2-103(B) A lawyer shall not compensate or give any thing of value to a person or organization to recommend or secure the lawyer's employment by a client, or as a reward for having made a recommendation resulting in the lawyer's employment by a client, except that the lawyer may pay the usual and reasonable fees or dues charged by any of the organizations listed in DR 2-103(D).

Requesting others to recommend employment

DR 2-103(C) A lawyer shall not request a person or organization to recommend or promote the use of the lawyer's services or those of the lawyer's partner or associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, as a private practitioner, except that: [(C)(1) and (C)(2) omitted.] [The (C)(1) and (C)(2) exception allows lawyers to request referrals from lawyer referral services that conform to the requirements of the rule.]

DR 2-103 (D) [Omitted.] [This rule allows lawyers to be recommended, employed, paid by, cooperate with, assist and provide legal services for legal aid or public defender offices provided for in the rule, military legal assistance offices, lawyer referral services that comply with rule, and bona fide organizations that meet the conditions in the rule.]

Accepting employment after giving unsolicited advice

DR 2-104 (A) A lawyer who has given unsolicited advice to a nonlawyer that the nonlawyer should obtain counsel or take legal action shall not accept employment resulting from that advice, except that:

(1) A lawyer may accept employment by a close friend, relative, former client, if the advice is germane to the former employment, or one whom the lawyer reasonably believes to be a client.

(2) A lawyer may accept employment that results from the lawyer's participation in activities designed to educate nonlawyers to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services if the activities are conducted or sponsored by any of the offices or organizations enumerated in DR 2-103(D)(1) through (4), to the extent and under the conditions prescribed in these rules.

(3) A lawyer who is recommended, furnished or paid by a qualified legal assistance organization enumerated in DR 2-103(D)(1) through (4) may represent a member or beneficiary of the organization, to the extent and under the conditions prescribed in these rules.

(4) Without affecting the lawyer's right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as the lawyer does not emphasize the lawyer's own professional

experience or reputation and does not undertake to give individual advice.

(5) If success in asserting rights or defenses of the lawyer's client in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept, but shall not seek, employment from those contacted for the purpose of obtaining their joinder.

These rules do not prohibit advertising permitted by DR 2-101. Both DR 2-103(E) and DR 2-104(B) expressly state “[n]othing in this rule prohibits a lawyer from accepting employment received in response to the lawyer's own advertising, provided the advertising is in compliance with DR 2-101.”

Disinterested and informed recommendations

Ethical Consideration 2-8 reminds attorneys that disinterested and informed recommendations are best for the client.

EC 2-8 Selection of a lawyer by a layman often is the result of the advice and recommendation of third parties—relatives, friends, acquaintances, business associates, or other lawyers. A layman is best served if the recommendation is disinterested and informed. In order that the recommendation be disinterested, a lawyer should not seek to influence another to recommend his [her] employment. A lawyer should not compensate another person for recommending him [her], for influencing a prospective client to employ him [her], or to encourage future recommendations.

Attorney's letter to chiropractor

No rule prohibits an attorney from sending a letter to a chiropractor asking for the opportunity to meet. (The rule restricting targeted direct mail solicitation, DR 2-101(F)(2) does not apply, because the letter is not directed to individuals in need of legal services.) No rule prohibits an attorney from enclosing with a letter the attorney's professional card and the law firm brochure. DR 2-102(A)(1) permits the use of professional cards. DR 2-101(B)(3) expressly permits an attorney to disseminate brochures and pamphlets containing biographical and informational data to clients, members of the bar, and others—the “others” category presumably includes chiropractors. No rule prohibits the attorney from using a letter of introduction summarizing the attorney's education and law practice. DR 2-101(D) provides examples of information presumed to be informational and acceptable for dissemination, including education and degrees, lawyer and law firm name, fields of practice, and memberships. No rule prohibits an attorney from sending a letter informing the chiropractor to call the attorney's office if the chiropractor has questions or would like to meet with the attorney. A letter is not an in-person or telephone solicitation prohibited by DR 2-101(F)(1).

Yet, a letter asking for an opportunity to meet with the chiropractor to discuss “potential client opportunities” raises ethical concerns as it may imply to the chiropractor that the attorney seeks a formal or informal mutual referral agreement with the chiropractor.

In *Cincinnati Bar Assn. v. White* (1997), 79 Ohio St.3d 491, an attorney formed a corporation for the purpose of recommending and promoting the attorney’s services to auto accident victims. The company employed several individuals to inspect auto collision reports, to telephone persons identified as not being “at fault,” and to refer them to the attorney. One of the employees was paid for each referral and the other was paid a weekly salary. The attorney agreed to refer his personal injury clients to the chiropractor for treatment in exchange for the chiropractor providing the lawyer with medical reports for use in settling or litigating claims. The attorney also agreed to pay the chiropractor’s fees when a personal injury claim was resolved for one of the clients. The settlement statements the attorney delivered to the clients indicated the attorney would withhold a portion of the settlement to pay the chiropractor to satisfy the client’s debts for chiropractic services. The facts revealed that the attorney failed to pay the withheld amounts, but instead converted the monies to his use by taking a “set-off” against what he claimed the chiropractor owed him under their lease agreement. *Id.* at 491-492. The attorney received an indefinite suspension for violations of disciplinary rules, including a violation of DR 2-103(B). *Id.* at 493.

In *Cincinnati Bar Assn. v. Rinderknecht* (1997), 79 Ohio St.3d 30, an attorney hired a business associate to organize his law office. The attorney introduced the business associate to a chiropractor who then hired the business associate to market the chiropractic practice. The business associate created a program to steer business to the attorney and chiropractor, hiring telephone solicitors to call accident victims to inform them of their rights, including receiving medical care and legal representation. The attorney and the chiropractor hired an individual to drive individuals to and from their offices for appointments. This individual monitored a police scanner for accidents and arrived at the scene, sometimes before the police, and offered to drive the victim to the attorney and the chiropractor. The individual received money for each referral. *Id.* at 31. The attorney received an indefinite suspension from the practice of law for violations of DR 2-101(F)(1), 2-103(A) and (B), and 2-104(A). *Id.* at 32.

Yes, an attorney may write a chiropractor and ask to meet so that the attorney may provide information about his or her legal services. No, an attorney may not establish a mutual referral agreement with a chiropractor, compensate a chiropractor for a referral, or request a chiropractor to recommend his or her services to others.

Some may see this distinction between proper advertisement and improper solicitation and referral as a fine line. But, to avoid violations of the disciplinary rules, it is a line that an attorney must not cross.

Agreements between chiropractors and attorneys for mutual referrals deprive clients of the referring lawyer’s professional independent judgment—that is why

the disciplinary rules prohibit such agreements. A mutual referral agreement constitutes a request to another to recommend or promote the attorney services in violation of DR 2-103(C). A mutual referral agreement improperly compensates another for a recommendation of employment in violation of DR 2-103(B). A mutual referral agreement is an improper recommendation of self-employment in violation of DR 2-103(A).

Further, an attorney may not form a business relationship with a chiropractor when the relationship involves the practice of law. Such conduct is prohibited by DR 3-103(A).

DR 3-103(A) A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.

Thus, the Board advises as follows. An attorney may send a letter to a chiropractor asking for the opportunity to meet to provide information about the attorney's legal services. But, an attorney may not enter an agreement with the chiropractor for mutual referral of clients; may not reward or compensate a chiropractor for a referral; and may not request that the chiropractor recommend the attorney's legal services to the chiropractor's clients. This does not mean an attorney is prohibited from providing legal services to a chiropractor's patient who learned of the attorney through the chiropractor. And, it does not mean an attorney is prohibited from suggesting that a client seek help from a chiropractor. It means that upon acquainting each other as to their professional services, the attorney and the chiropractor exercise their independent professional judgments. For example, if an attorney believes it is in the client's best interest to see a chiropractor and the client needs guidance in choosing a chiropractor, the attorney may provide several names of chiropractors so that the client may freely choose. If a chiropractor's patient needs legal services, the client should come to an attorney voluntarily having exercised free choice, not as a condition imposed by the chiropractor. The exercise of an attorney's professional independent judgment on behalf of a client demands that there be no mutual referral agreements, no rewards or compensation for recommendations or referrals, and no improper self-recommendation of legal services. Disinterested and informed recommendations are best for a client. An attorney and a chiropractor should not engage in any conduct involving or implying there is a business relationship between the two.

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.