

# ***The Supreme Court of Ohio***

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

## **OPINION 2005-7**

**Issued August 5, 2005**

*[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]*

**OPINION:** It is proper for attorneys to volunteer in a bar association sponsored program providing public education and pro bono legal services regarding advance directive forms. The term “advance directive” refers to living will, health-care power of attorney, and anatomical gift forms, and to mental health declarations. Such efforts by the bar association and the volunteer attorneys help educate the public and provide access for individuals without means to afford such legal assistance.

Whether it is proper for individual lawyers or law firms, acting on their own and not through a proper auspice such as a bar association, to provide public education and pro bono legal services regarding advance directive forms depends upon the facts and circumstances. The propriety is determined by the purpose and the conduct. It would be proper if the lawyer’s or law firm’s purpose is to provide needed public education and pro bono legal services and there is no improper solicitation of legal business. It would be improper if the purpose and modus operandi is in-person solicitation of legal business.

**SYLLABUS:** This opinion addresses questions regarding attorney participation in public education and pro bono activities.

1. Is it proper for attorneys to volunteer in a bar association sponsored program providing education and pro bono legal services to the public regarding advance directive forms?
2. Is it proper for individual lawyers or law firms, acting on their own and not under sponsorship of a bar association, to provide their own education and pro bono services to the public regarding advance directive forms at booths in public or semi-public places?

For purposes of this opinion, the term “advance directive” refers to living will, health-care power of attorney, and anatomical gift forms, and to mental health declarations forms.

**Question One**

Is it proper for attorneys to volunteer in a bar association sponsored program providing education and pro bono legal services to the public regarding advance directive forms?

A bar association envisions sponsoring a program in which volunteer attorneys would provide education and legal services to the public regarding advance directive forms. Through this program, advance directive forms would be offered to the public, questions would be answered about the forms and the law, assistance would be provided in completing the forms, and the forms would be notarized or witnessed. The activities would take place at locations where the public would gather such as a booth at a shopping center or a festival, or at places of business such as hospitals, or at the bar association offices.

Under the Ohio Code of Professional Responsibility providing public education and pro bono legal services are goals of aspiration for the legal profession. See EC 2-1, 2-2, 2-3, 2-4, 2-5. In particular, EC 2-1 states “important functions of the legal profession are to educate laymen to recognize their legal problems, to facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available.” EC 2-2 states “lawyers acting under proper auspices should encourage and participate in educational and public relations programs concerning our legal system with particular reference to legal problems that frequently arise.”

There is no ethical bar to an attorney participating in such proposed bar association activity.

Advance directives are a legal concern of interest to the public. And, the bar association is a proper auspice for sponsoring educational efforts regarding the law governing advance directives and organizing volunteer legal assistance related thereto.

When pro bono education and legal services are provided through a proper auspice such as bar association sponsored activities designed to assist the public, an attorney's participation does not constitute improper in-person solicitation of legal business, even if private employment may result from the attorney's participation.

**DR 2-104(A)(2)** A lawyer may accept employment that results from the lawyer's participation in activities designed to educate non-lawyers 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. [Bar association is an organization enumerated in DR 2-103(D)(1)(d)].

In conclusion, it is proper for attorneys to volunteer in a bar association sponsored program providing education and pro bono legal services to the public regarding advance directive forms. The term “advance directive” refers to living will, health-care power of attorney, and anatomical gift forms, and to mental health declarations. Such efforts by the bar association and the volunteer attorneys help educate the public and provide access for individuals without means to afford legal assistance.

## Question 2

Is it proper for individual lawyers or law firms, acting on their own and not under sponsorship of a bar association, to provide education and pro bono services to the public regarding advance directive forms at booths in public or semi-public places?

Individual lawyers or law firms are not prohibited from educating the public and providing pro bono services. They are encouraged to do so. EC 2-1, 2-2, 2-3, 2-4, 2-5.

Nevertheless, whether the public education and pro bono activities of individual lawyers or law firms, acting on their own rather than through a proper auspice such as a bar association, is proper will depend upon the facts and circumstances.

A law firm may conduct a legal seminar to educate the public. Guidance for doing so is provided in Op. 94-13. See Ohio SupCt, Bd Comm’rs. on Grievances & Discipline, Op. 94-13 (1994).

A lawyer or law firm may accept pro bono representation of a client who seeks the lawyer’s or law firm’s services. But, a lawyer or law firm is prohibited from in-person solicitation of legal business.

DR 2-101(F)(1) states: “A lawyer shall not make any solicitation of legal business in person or by telephone, except as provided in DR 2-103 and DR 2-104. DR 2-103, *inter alia*, provides for a lawyer to participate in qualified legal assistance programs. DR 2-104 provides specific examples as to when acceptance of employment arising from certain circumstances is permitted.

### DR 2-104. SUGGESTION OF NEED OF LEGAL SERVICES.

- (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.
- (B) Nothing 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.

This rule is helpful to understanding when it is acceptable to accept employment arising from educational and other activities.

A lawyer or law firm must be wary of setting up a booth in a public or private place. The propriety will depend on the purpose and the conduct.

In past Opinion 99-5, the Board advised that a law firm may not set up a booth at a public place for the purpose of personally distributing law firm brochures because it involved improper solicitation of legal business. See Ohio SupCt, Bd Comm'rs. on Grievances & Discipline, Op. 99-5 (1999).

But, setting up a booth at a public or semi-public place for the purpose of providing public education and pro bono assistance to meet a bona fide legal need may be distinguished from setting up a booth for the purpose of soliciting fee-generating legal business. The onus will be on the law firm to demonstrate a proper purpose of providing needed public education and pro bono legal services and proper conduct in doing so.

In conclusion, whether it is proper for individual lawyers or law firms, acting on their own and not through a proper auspice such as a bar association, to provide public education and pro bono legal services regarding advance directive forms depends upon the facts and circumstances. The propriety is determined by the purpose and the conduct. It would be proper if the lawyer's or law firm's purpose is to provide needed public education and pro bono legal services and there is no improper solicitation of legal business. It would be improper if the purpose and modus operandi is in-person solicitation of legal business.

**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.**