

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 2005-9

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[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

SYLLABUS: A lawyer may not advertise legal services with coupons for free consultation or dollars off the cost of legal services. Advertising legal services with fee coupons is a characterization of the fees as “discount” or “special” and does not comply with DR 2-101(A)(5). Although a lawyer may not use fee coupons, a lawyer may advertise information regarding fees and charges as set forth in DR 2-101(E)(1), if presented in compliance with DR 2-101(B). Because DR 2-101(E)(1)(a) permits advertisement of fee information regarding an initial consultation, a lawyer may state in an advertisement whether an initial consultation is free. Prohibiting the use of fee coupons in lawyer advertising does not interfere with a lawyer’s exercise of independent professional judgment in setting fees for legal services at a rate that is reasonable and not excessive under the factors set forth in DR 2-106(B).

OPINION: This opinion addresses a question regarding advertisement of legal services.

Is it proper for a lawyer’s advertisement to include a coupon for dollars off the cost of legal services or a coupon for a free initial consultation?

DR 2-101(A)(5) of the Ohio Code of Professional Responsibility explicitly prohibits the characterization of fees and rates as “discount” or “special.”

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:

(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.

A coupon for dollars off legal services or a coupon for a free consultation is a characterization of a lawyer's rates and fees as "discount" or "special." Because Ohio's DR 2-101(A)(5) explicitly prohibits the characterization of fees and rates as "discount" or "special" it is improper for a lawyer's advertisement to include a coupon for dollars off legal services or a coupon for a free consultation.

Across the nation, opinions differ as to the use of coupons in legal advertising. Some advisory committees view lawyers' advertisements with coupons for discounts on legal services as improper. See, Bar Assn. Nassau County, Op. 83-2 (1983); Maryland State Bar Assn. Op. 86-18 (undated). Some advisory committees view coupons for discounts on legal services as proper. See, Alabama State Bar, Op. 87-134 (1987); Connecticut Bar Assn. Op. 94-23 (1994); State Bar of Michigan, Op. CI-704 (1981); Philadelphia Bar Assn. Op. 92-12 (1992); South Carolina Bar, Op. 96-27 (1997). Some committees view coupons for free initial consultation as proper. See Cincinnati Bar Assn, Op. 91-92-02 (undated); State Bar of Texas, Op. 452 (1987) (may use if advertisement is in compliance with provisions on advertising and solicitation).

But, Ohio lawyers are bound by Ohio's disciplinary rules. Ohio's rule prohibits the characterization of fees and rates as "discount" or "special."

Thus, this Boards advises that a lawyer may not advertise legal services with coupons for free consultation or dollars off the cost of legal services. Advertising legal services with fee coupons is a characterization of the fees as "discount" or "special" and does not comply with DR 2-101(A)(5). Although a lawyer may not use fee coupons, a lawyer may advertise information regarding fees and charges as set forth in DR 2-101(E)(1), if presented in compliance with DR 2-101(B). Because DR 2-101(E)(1)(a) permits advertisement of fee information regarding an initial consultation, a lawyer may state in an advertisement whether an initial consultation is free. Prohibiting the use of fee coupons in lawyer advertising does not interfere with a lawyer's exercise of independent professional judgment in setting fees for legal services at a rate that is reasonable and not excessive under the factors set forth in DR 2-106(B).

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.