

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 94-13

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[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]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 2-104, eff. Dec. 1, 1995; DR 2-103, eff. Jul. 1, 1996.]

SYLLABUS: A lawyer who conducts a legal seminar for the public may charge an attendance fee. However, if a fee is charged it should be nominal since the aspirational goal within EC 2-2 of the Ohio Code of Professional Responsibility suggests that the primary motivation for conducting legal seminars should be to benefit the public rather than to benefit the lawyer.

A lawyer who conducts a legal seminar for the public may accept legal employment that results from the activity, provided the seminar does not highlight the lawyer's professional experience beyond what is permitted in DR 2-101 and DR 2-105, the lawyer does not undertake to give individual advice, and the lawyer does not engage in improper solicitation. A lawyer may make a general statement to attendees regarding availability, telephone number, address, and whether the lawyer routinely provides free initial consultation. A lawyer may not make a specific statement to any attendee that the attendee should seek the attorney's counsel. If a lawyer recognizes that an attendee may have legal problems or is unaware of his or her legal rights or obligations, the lawyer may suggest that the attendee seek counsel of the attendee's choice.

A lawyer who conducts a legal seminar for the public may send a letter to businesses, civic or charitable organizations, and other groups to inform them of the lawyer's availability to provide public speaking.

A lawyer may speak on legal topics at seminars sponsored by non-lawyers. However, co-sponsorship of seminars with non-lawyers is not encouraged, since it may create an appearance of an improper relationship between a lawyer and a non-lawyer. Nevertheless, the determination of whether co-sponsorship of a seminar between a lawyer and a non-lawyer would be proper depends upon the facts and circumstances of the relationship between the co-sponsors. If a co-sponsorship is ethically undertaken, a nominal attendance fee could be divided between co-sponsors.

A lawyer may participate in a radio talk show to educate the public regarding legal issues and may accept legal employment that results from the activity, so long as the radio talk show does not highlight the lawyer's professional experience beyond what is permitted in DR 2-101 and DR 2-105, the lawyer does not undertake to give individual advice, and the lawyer does not engage in improper solicitation.

OPINION: This opinion addresses legal seminars, radio talk shows, and the acceptance of legal business generated from these forms of communications. The questions are set forth below.

Legal Seminars

1. Is it proper for a lawyer who conducts a legal seminar for the public to charge an attendance fee?
2. Is it proper for a lawyer who conducts a legal seminar for the public to accept legal employment that results from the activity?
3. Is it proper for a lawyer who conducts a legal seminar for the public to send a letter to businesses, civic or charitable organizations, or other groups to inform them of the lawyer's availability to provide public speaking?
4. Is it proper for a lawyer to speak on legal topics at public seminars sponsored or co-sponsored by someone other than the lawyer?

Radio Talk Shows

1. Is it proper for a lawyer to participate in a radio talk show to educate the public regarding legal issues and to accept legal employment that results from the activity?

Introduction

Canon 2 of the Ohio Code of Code of Professional Responsibility broadly states that "A Lawyer Should Assist the Legal Profession in Fulfilling Its Duty to Make Legal Counsel Available." Ethical Consideration 2-1 reminds lawyers that educating the public to recognize their legal problems is an important function of the legal profession.

EC 2-1

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 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. (Emphasis added).

Ethical Consideration 2-2 expressly identifies seminar participation as a permissible activity for lawyers.

EC 2-2

The legal profession should assist laymen to recognize legal problems because such problems may not be self-revealing and often are not timely noticed. Therefore, **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. Such educational programs should be motivated by a desire to benefit the public rather than to obtain publicity or employment for particular lawyers. **Examples of permissible activities include preparation of institutional advertisements and professional articles for lay publications and participation in seminars, lectures, and civic programs.** But a lawyer who participates in such activities should shun personal publicity. (Emphasis added).

A lawyer who conducts a legal seminar must be familiar with these ethical considerations as well as the Code's rules governing publicity, DR 2-101; professional notices, DR 2-102; recommendation of professional employment, DR 2-103; suggestion of need for legal services, DR 2-104; and limitation of practice, DR 2-105.

Seven years ago, the Board issued Opinion 87-007 (1987) addressing advertising and conducting of legal seminars. The syllabus broadly stated that "[a] lawyer or law firm may ethically advertise and conduct a legal seminar." See Ohio SupCt, Bd of Comm'rs on Grievances and Discipline, Op. 87-007 (1987) advising that

a lawyer or law firm may ethically promote a legal seminar through printed advertising provided the advertisement does not contain false, fraudulent, misleading or deceptive statements or claims. Furthermore, a lawyer or law firm may ethically conduct a legal seminar provided the lawyer does not tout or recommend himself [herself] or his [her] law firm for employment to those attending the seminar. In other words, the seminar should not be used as a forum for solicitation or client development.

In this opinion, the Board is asked for further guidance on ethical issues evolving in the area of legal seminars and to advise upon participation in radio talk shows to educate the public regarding legal issues.

Part 1: Legal Seminars

Question One

Is it proper for a lawyer who conducts a legal seminar for the public to charge an attendance fee?

There is no rule within the Ohio Code of Professional Responsibility prohibiting a lawyer from charging the public a fee to attend a legal seminar. Elsewhere, lawyers have been permitted to offer legal seminars for a fee. See e.g., Bar Ass'n of Nassau County, Op. 87-25 (1987). This Board agrees that a lawyer who conducts a legal seminar for the public may charge an attendance fee.

Yet, EC 2-2 reminds Ohio lawyers that “[s]uch educational programs should be motivated by a desire to benefit the public rather than to obtain publicity or employment for particular lawyers.” By charging the public a fee to attend legal seminars, a lawyer's motivation may appear to be pecuniary rather than for the benefit of the public. Thus, the Board advises that if a fee is charged, it should be nominal since the aspirational goal within EC 2-2 of the Code suggests the primary motivation for conducting legal seminars should be to benefit the public rather than the lawyer.

Question Two

Is it proper for a lawyer who conducts a legal seminar for the public to accept legal employment that results from the activity?

Although the primary purpose of lawyers conducting legal seminars is to educate the public, a secondary effect is that publicity is generated and employment opportunities arise. Several rules within the Code provide guidance in determining whether a lawyer may ethically accept employment that results from a lawyer's participation in a legal seminar.

Disciplinary Rule 2-101(F) (1) states that "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." Since seminar participation puts attorneys in face to face contact with individuals, there must be no in-person solicitation.

Disciplinary Rule 2-104(A) (4) provides that a lawyer may speak publicly without affecting his or her right to accept employment.

DR 2-104. SUGGESTION OF NEED OF LEGAL SERVICES

(A) A lawyer who has given unsolicited advice to a layman that he [she] should obtain counsel or take legal action shall not accept employment resulting from that advice, except that: [exceptions (1), (3) and (5) omitted]

(2) A lawyer may accept employment that results from his [her] participation in activities designed to educate laymen to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services if such activities are conducted or sponsored by any of the offices or organizations enumerated in DR 2-103 (D) (1) through (5) [sic], to the extent and under the conditions prescribed therein.

(4) Without affecting his [her] right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as he [she] does not emphasize his [her] own professional experience or reputation and does not undertake to give individual advice.

Read together, these rules permit a lawyer to ethically accept legal employment that secondarily results from a legal seminar so long as the seminar does not highlight the lawyer's professional experience beyond what is permitted in DR 2-101 and DR 2-105, the lawyer does not engage in in-person solicitation, and the lawyer does not undertake to give individual advice.

To avoid giving individual advice, it would be prudent for the lawyer to advise the attendees that the lawyer's discussion in regard to questions will be general and not intended as individual advice for specific problems. In addition, it may be helpful for the attorney to remind the attendees not to divulge confidential information.

To avoid improper solicitation, a lawyer conducting or speaking at a legal seminar must refrain from making statements or suggestions that the seminar attendees should seek the attorney's counsel. However, the attorney may make a general statement to the attendees regarding his or her availability, including his or her telephone number, address, and whether the lawyer provides free initial consultation.

As example, at a seminar an attendee might approach the lawyer conducting a seminar and ask whether or not to obtain legal counsel. If the lawyer recognizes that the attendee may have a legal problem or that the attendee is unaware of his or her legal rights or obligations, the lawyer may properly suggest that the attendee seek legal counsel of the attendee's choice. The lawyer may also inform the attendee that his or her office provides such legal services, if this is a factual statement. Another example is that an attendee might approach a lawyer conducting a seminar and directly request the lawyer's legal services. Provided that the lawyer has not made specific statements to the attendees that they should seek his or her counsel, the lawyer may accept employment from that attendee. Ultimately, the decision as to seeking counsel must always be left to the attendee.

In this Board's view a lawyer who complies with the above guidelines and the above cited provisions of the Code, may ethically accept employment that results from legal seminars. This view compliments past Opinion 87-007 (1987) and is in line with ethics opinions issued by other states. See e.g., Mississippi State Bar, Op. 156 (1988) (a lawyer may participate in and accept employment generated from a legal seminar, provided the seminar complies with advertising rules and the lawyer does not directly solicit business at the seminar); Pennsylvania Bar Association, Opinion 89-32 (undated) (a lawyer may speak to a group and may accept representation if initiated by a person within the group); Virginia State Bar, Op. 856 (1986) (a lawyer may offer free estate planning seminars to congregants at local churches and accept representation from those who request the attorney's employment, provided that the seminar and its advertisement are not misleading or false and the lawyer does not imply that the seminars are endorsed by the churches).

In summary, this Board concludes that a lawyer who conducts a legal seminar may accept legal employment that results from the activity, provided the seminar does not highlight the lawyer's professional experience beyond what is permitted in DR 2-101 and DR 2-105, the lawyer does not undertake to give individual advice, and the lawyer does not engage in improper solicitation. A lawyer may make a general statement to attendees regarding availability, telephone number, address, and whether the lawyer routinely provides free initial consultation. A lawyer may not make a specific statement to any attendee that the attendee should seek the attorney's counsel. If a lawyer recognizes that an attendee may have legal problems or is unaware of his or her legal rights or obligations, the lawyer may suggest that the attendee seek counsel of the attendee's choice.

Question Three

Is it proper for a lawyer to send a letter to businesses, civic or charitable organizations, and other groups to inform them of the lawyer's availability to provide public speaking?

Letters announcing availability to conduct legal seminars are consistent with the aspirational goals within EC 2-1 and 2-2 of furthering the profession's important function of educating the public on various legal topics. However, such letters are a form of communication subject to the restrictions within the publicity rule, DR 2-101.

Several states have found it proper for a lawyer to advertise a legal seminar to the public through the mail. See, e.g., Bar Ass'n of Nassau County, Op. 87-25 (1987); Iowa State Bar Ass'n, Op. 89-5 (1989). Some states require advertising disclaimers on the mailings. See, e.g., Iowa State Bar Ass'n, Op. 89-41 (1990); Alabama State Bar, Op. 86-49 (1986). Other states do not require disclaimers. See e.g., State Bar of Arizona, Op. 88-7 (1988). One state advised that invitations to a seminar on automobile accident claims may be mailed to randomly selected members of the public, but may not be targeted to specifically selected individuals. See, North Carolina Bar Ass'n, Op. 36 (1988).

In Ohio, DR 2-101(F) (2) permits, but places restrictions upon, targeted direct mailings to "persons or groups of persons who may be in need of specific legal service by reason of a circumstance, condition, or occurrence that is known or, upon reasonable inquiry, could be known to the soliciting lawyer or law firm." For a review of the restrictions, see DR 2-101(F) (2). Generally speaking, letters announcing availability to do public speaking would not be considered a targeted direct mail solicitation subject to the restrictions within DR 2-101(F) (2). However, if the letters are targeted to "persons or groups of persons who may be in need of specific legal service by reason of a circumstance, condition, or occurrence that is known or, upon reasonable inquiry, could be known to the soliciting lawyer or law firm," the lawyer must comply with the restrictions set forth in DR 2-101 (F) (2) (a), (b), (c), (d), and (e). As a caveat, a lawyer may not attempt to circumvent the Code's restrictions regarding direct mail solicitation to targeted groups through the pretext of offering a legal seminar.

Under DR 2-101 (B) (3) (1993) "[b]rochures or pamphlets containing biographical and informational data that is acceptable under these rules may be disseminated directly to clients, members of the bar, or others." Thus, in this Board's view, an attorney may include an informational brochure to

accompany a letter announcing availability to provide public speaking, provided that the brochure complies with DR 2-101.

In conclusion, the Board advises that a lawyer may send a letter to businesses, civic or charitable organizations, and other groups to inform them of the lawyer's availability to provide public speaking.

Question Four

Is it proper for a lawyer to speak on legal topics at a public seminar sponsored by a non-lawyer or for a lawyer to co-sponsor a seminar with a non-lawyer?

There is no specific rule within the Code that would prohibit a lawyer from serving as a speaker on legal topics at a public seminar sponsored by a non-lawyer. Participation in educational seminars sponsored by others is consistent with the aspirational goals within the Code since the lawyer is enhancing the community's awareness on various legal topics. See EC 2-2, "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."

Further, under DR 2-104 (A) (2) attorneys have been given explicit permission to participate in and accept employment resulting from educational activities conducted or sponsored by any of the offices or organizations enumerated in DR 2-101 (D) (1) through (4), namely, a legal aid or public defender office; a military legal assistance office, a lawyer referral service operated, sponsored, or approved by a bar association; or any bona fide organization meeting the requirements within the rule. The Board does not interpret that language as to exclude an attorney from participating in a public seminar sponsored by others. Particularly since DR 2-104 (A) (4) broadly permits attorneys to accept employment resulting from public speaking: "[w]ithout affecting his [her] right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as he [she] does not emphasize his [her] own professional experience or reputation and does not undertake to give individual advice.

Nevertheless, participation in seminars sponsored by non-lawyers should not be used as a vehicle for circumventing DR 2-103, the rule prohibiting improper recommendation of professional employment.

DR 2-103

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

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

(C) A lawyer shall not request a person or organization to recommend or promote the use of his [her] services or those of his [her] partner or associate, or any other lawyer affiliated with him [her] or his [her] firm, as a private practitioner, except that [exceptions for bar association lawyer referral services and bona fide organizations as defined by DR 2-103(D)].

Also, participation in seminars conducted by non-attorneys should not be used as a method to assist a non-attorney in the unauthorized practice of law which is prohibited by DR 3-102. See e.g., Ohio State Bar Ass'n, Informal Op. 94-2 (1994) (addressing participation in living trust seminars sponsored by outside organization and solicitation of fee generating legal business at such seminars).

Co-sponsorship of seminars with non-attorneys magnifies these ethical concerns. Some co-sponsorships clearly would be improper. For example, a co-sponsorship with a non-lawyer whose purpose was to procure legal work or financial benefit for the lawyer would violate DR 2-103 (C). Other co-sponsorships may create an appearance of an improper relationship between a lawyer and a non-lawyer. For example, even though co-sponsors may not intend to recommend each other's services or procure employment for each other, the co-sponsorship itself may create such appearance. Yet, despite ethical concerns, co-sponsorships have not been considered per se improper. See e.g., State Bar of Michigan, Op. RI-99, (1991) (permitting law firm co-sponsorship with a local hospital); Iowa State Bar Ass'n, Op. 91-16 (1991) (permitting lawyers and other professionals to be listed as sponsors for a seminar on estate planning); Pennsylvania Bar Ass'n, Op. 93-216 (1994) (permitting lawyer and an outreach organization to co-sponsor a community-based seminar on toxic tort hazards).

In this Board's view a lawyer may speak on legal topics at seminars sponsored by non-lawyers. However, co-sponsorship of seminars with non-lawyers is not encouraged, since it may create an appearance of an improper relationship between a lawyer and a non-lawyer. Nevertheless, the determination of whether co-sponsorship of a seminar between a lawyer and a non-lawyer would be proper depends upon the facts and

circumstances of the relationship between the co-sponsors. A bright line cannot be drawn within this opinion. If a co-sponsorship is ethically undertaken, a nominal attendance fee could be divided between co-sponsors. A nominal attendance fee would not be considered a legal fee. Therefore, division of a nominal attendance fee with a co-sponsor would not be a prohibited division of a fee with a non-lawyer under DR 3-102.

Part II: Radio Talk Shows

Question One

Is it proper for a lawyer to participate in a radio talk show to educate the public regarding legal issues and to accept legal employment that results from the activity?

Radio is mentioned within the Code as a permitted form of communication for advertising legal services. See Code of Professional Responsibility, DR 2-101 (B) (1). There is nothing within the Code to suggest that the radio would be an improper format for educating the public regarding legal issues.

An attorney who uses an educational radio show as a form of educational seminar must abide by the same guidelines set forth above for legal seminars. However, since radio talk shows often utilize a format where listeners are invited to comment or ask questions, particular caution is warranted. For example, a lawyer participating in this type of radio show must be extremely careful not to impart individual advice. See e.g., Colorado Bar Ass'n, Op. 83 (undated) South Carolina Bar, Op. 86-4 (undated). In addition, attorneys participating in or associated with pending civil or criminal matters must be careful not to make statements prohibited under the trial publicity rule, DR 7-107. Finally, confidences and secrets should not be divulged over the radio. Concerns regarding violation of confidences and secrets and establishment of an attorney-client relationship were among the reasons why one state advised that a law firm may not sponsor a radio call-in show where the public's legal questions would be answered or referred to a bar association. See Iowa State Bar Ass'n, Op 93-8 (1993).

It is this Board's view that these concerns can be safeguarded. As with legal seminars, it may be prudent for a lawyer to advise a radio audience that discussion in regard to questions will be general and not intended as individual advice for specific problems. In addition, it may be helpful for the attorney to remind the radio audience not to divulge confidences. As with other types of legal seminars there should be no improper solicitation. The lawyer may make a general statement to listeners regarding his or her availability, including his or her telephone number, address, and whether the lawyer routinely provides free initial consultation. The lawyer may not make a specific statement to any listener that the listener should seek the lawyer's counsel. If the lawyer recognizes that a listener may have legal problems or is unaware of his or her legal rights or obligations, the lawyer may properly suggest that the listener seek counsel of the listener's choice. See discussion in Part One of this opinion.

In conclusion, this Board advises that a lawyer may participate in a radio talk show to educate the public regarding legal issues and may accept legal employment that results from the participation, so long as the radio talk show does not highlight the lawyer's professional experience beyond what is permitted in DR 2-101 and DR 2-105, the lawyer does not undertake to give individual advice, and the lawyer does not engage in improper solicitation.

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.