

AO 1983-4/15

NEW HAMPSHIRE BAR ASSOCIATION  
Ethics Committee Advisory Opinion  
Advertising: Mass Mailed Circulars or Brochures

June 12, 1984

ADVISORY OPINION

ETHICS COMMITTEE ADVISORY OPINION: #1983-4/15  
April 15, 1983

Reviewed by Board of Governors July 19, 1984

QUESTION:

The facts presented involve the use of circulars or brochures to advertise an attorney's services through a promotion company which will send the material through the mail in a packet together with other types of business advertising.

The issues involve both the form of advertising; i.e., mass mailing circulars and, indirectly, the contents of such mailings. 1) Is this form of advertising acceptable and not contrary to the rules prohibiting solicitation? 2) Is the content of the circulars acceptable advertising? The issue of content is only raised indirectly by the examples of advertising which accompany the letter requesting this opinion. Such examples show advertising discounts or free gifts offered with the purchase of a product.

RESPONSE:

The Ethics Committee has considered this request for an opinion regarding the use of circulars or brochures to advertise an attorney's services through a promotion company which would mail the material in a packet together with other non-legal business advertising. Although the Committee has not been given proposed advertising copy nor any indication of the other "services" provided by the promotion company, the Committee offers its opinion based on the examples provided in the inquiry letter.

Advertising and solicitation are governed by D.R. 2-101 of the New Hampshire Code of Professional Responsibility as adopted on March 20, 1984. Section (A) states, "no lawyer may conduct in-person solicitation of clients through personal contact or by mail except advertising as authorized by this rule." The current Code recognizes advertising as helpful to the layperson in the process of making an informed selection of lawyers. Such advertising should be formulated to convey only information that is necessary to make an appropriate selection (see E.C. 2-8). The prohibition of solicitation is largely based on the possibility of undue influence, intimidation and over-reaching in situations where prospective clients are known to need legal services. While neither the present Code of Professional Responsibility nor this Committee have addressed the definition of solicitation, we find guidance in the ABA Model Rules of Professional Conduct. Rule 7.3 states that "The term "solicit" includes contact in person, by telephone or telegraph, by letter or other writing, or by other communication directed to a

specific recipient, but does not include letters addressed or advertising circulars distributed generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but who are so situated that they might in general find such services useful.” Further guidance is given in the current New Hampshire Code under E.C. 2-10 which provides that “A lawyer should ensure that the information contained in any advertising...is disseminated in an objective and understandable fashion and would facilitate the prospective client’s ability to compare the qualifications of the lawyers available to represent him. A lawyer should strive to communicate said information without undue emphasis upon style and advertising stratagems which serve to hinder rather than to facilitate intelligent selection of counsel.”

It is this Committee’s opinion that the use of advertising circulars or similar materials distributed generally through the mail, not speaking to a specific matter, and to persons not known to need legal services of the kind offered by the attorney is not per se prohibited by D.R. 2-101 (A). General mailings avoid the potential abuse of “targeting” recipients through special mailings lists. No determination can be made by this Committee on the use of promotion companies to prepare and distribute advertising material, but the lawyer using such services should be aware of the potential for ethical problems in the area not only of solicitation as discussed above, but in the form and context of such material.

This Committee has previously addressed the issues surrounding D.R. 2-101 (B) which provides that “a lawyer shall not on behalf of himself, his partner, or associates or any other lawyer associated with him or his firm, use or participate in the use of any form of public communications containing a false, fraudulent, misleading or deceptive statement or claim.” (See copy of Ethics Committee Advisory Opinion passed on October 11, 1983 - #1983-4/6.) Clearly, advertising copy consistent with the examples forwarded with the inquiring attorney’s letter showing discounts and gifts is not in complete compliance with these rules. Careful review of D.R. 2-101 (C) with its list of eleven specifications is recommended.