



Committee on Professional Ethics

Opinion #507 - 3/27/79 (69-78)

Topic: Advertising; solicitation
of employment; letters to
non-lawyers

Digest: A lawyer's advertisement
which satisfies the test
of DR 2-101 may properly
be mailed to non-lawyers
with whom the lawyer main-
tains no special relationship,
in the absence of a judicial
holding to the contrary.
The advertisement may identify
areas of the lawyer's practice
and a public office held by
him, but may not refer to
his philosophy of practice.

Code: EC 1-5;
DR 2-100(A), 2-101, 2-102,
2-103(A), 2-105(A), 9-101(C).

QUESTION

A lawyer, formerly employed by a government agency, has recently gone into private practice and seeks to publicize his new office. Under the circumstances, may the lawyer:

1. Send to 2,000 corporate executives with whom the lawyer has no special relationship an announcement of his availability for legal work on corporate matters?
2. Mention in such an announcement his former employment by a government agency?
3. State in such an announcement that he has had and continues to have an active practice before that agency?
4. Describe in such an announcement his philosophy of practice as one of "maintaining a rapport as distinguished from an antagonistic relationship with governmental agencies?"

OPINION

DR 2-101 in general now permits advertising and other publicity by lawyers, provided it is not false, deceptive or misleading and does not adversely reflect on the legal profession as a whole, and provided further that it does not contain puffery, self-laudation, claims regarding the quality of the lawyer's legal services or claims that cannot be measured or verified.

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DR 2-103(A) states that a lawyer shall not solicit employment for himself "in violation of any statute or court rule." Although that section further states that advertising in accordance with DR 2-101 shall not be deemed such solicitation, DR 2-100(A) also provides that a lawyer shall not advertise or publicize himself in violation of any statute or rule of court; it follows that advertising which violates a valid statute cannot satisfy DR 2-101.

Section 479 of the Judiciary Law provides:

"It shall be unlawful for any person or his agent, employee or any person acting on his behalf, to solicit or procure through solicitation either directly or indirectly legal business, or to solicit or procure through solicitation a retainer, written or oral, or any agreement authorizing an attorney to perform or render legal services, or to make it a business so to solicit or procure such business, retainers or agreements."

This Committee lacks jurisdiction to pass on questions of law. If a court of competent jurisdiction holds the mailing of a letter such as the one described in this inquiry to be a violation of Judiciary Law §479, and if that section is constitutional in light of the holding in Bates v. State Bar of Arizona, 433 U.S. 350 (1977), it of course follows that the mailing would constitute unethical conduct. DR 2-100(A); EC 1-5.

In the absence of such a holding, however, it seems clear to us in this era of direct-mail advertising that an advertisement which satisfies the standards of DR 2-101 does not become an improper solicitation merely because it is placed in the recipient's mail box by a postman rather than by a newsboy. In our opinion it is irrelevant whether the advertisement reaches its intended audience through the media or through the mails, provided that (i) the standards contained in DR 2-101 are satisfied, and (ii) the method of communication does not, as a matter of law, constitute a violation of a valid statute.

A lawyer may with ethical propriety publicly identify one or more areas of law in which he practices (DR 2-105[A]), and he may do so in an otherwise proper advertisement (DR 2-101[C][1]). The advertisement may properly specify public offices held by him, and a truthful, non-deceptive reference to his practice before governmental agencies is also proper. DR 2-101(C)(1); see, N.Y. State 487 (1978). However, a reference to the attorney's philosophy of practice, such as the one proposed in this case, is improper, because it is a claim "that cannot be measured or verified," and could be construed as self-laudation. DR 2-101(B). Further, coupled with the proposed references to the attorney's past employment by a

CON'T---

government agency and his practice before that agency, it could be construed as an implication that he may be able to influence the agency improperly or upon irrelevant grounds. If so, the reference would violate DR 9-101(C).

For the reasons stated, and subject to the qualifications set forth above, the first three subparts of the question posed are answered in the affirmative and the fourth is answered in the negative.
