



Committee on Professional Ethics

Opinion #428 - 3/1/76 (107-75) Topic: Advertising; Solicitation;
Prepaid Legal Service Programs.

Digest: Lawyer may permit identification, services available and fees to be stated in brochure distributed by qualified legal service organization; lawyer may not himself distribute, cause to be distributed, or pay for cost or distribution of such brochure.

Code: DR 2-101, 2-103, 2-104
EC 2-33
Definition 8

QUESTIONS

May a lawyer cooperate with a qualified legal assistance organization which circulates a brochure among its membership promoting its legal service program, which sets forth the lawyer's name, office address, telephone number, areas of practice in which he concentrates, certain other biographical information and a schedule of his charges?

May the lawyer himself circulate or cause such brochure to be circulated, or pay for its printing or distribution?

OPINION

The ban on advertising by or in behalf of lawyers, imposed by DR 2-101(B), was relaxed by amendments to the Code effective in New York on April 19, 1975, relating to group legal service plans sponsored by certain organizations referred to in the amendments as "qualified legal assistance organizations". The amendments were drawn with a view toward effectuating the mandate of Canon 2 that "A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available". They were designed to provide such counsel to persons whose financial status was below that which would enable them to retain private counsel at usual charges, but above that which would render them eligible to receive services currently available to the indigent. In substance, they permit a lawyer to accept employment that results from his cooperation with a qualified legal assistance organization in its group legal service program, provided specified conditions are met. DR 2-101; DR 2-103; DR 2-104; EC 2-33; Definition 8. For guidelines applicable to these programs see N.Y. State 416 (1975).

An important consideration in the adoption of these amendments was that the success of a group legal service plan depends upon the ability of the public to receive adequate information regarding the availability, cost and features of the plan. Accordingly the amendments permit a qualified legal assistance organization to engage in "dignified commercial publicity, which does not identify any lawyer by name", and also permit a lawyer to be identified and certain biographical information to be

furnished "in communications by a qualified legal assistance organization ... directed to a member or beneficiary of such organization".

DR 2-101(B), as amended provides:

"However, a lawyer recommended by, paid by or whose legal services are furnished by, a qualified legal assistance organization may authorize or permit or assist such organization to use means of dignified commercial publicity, which does not identify any lawyer by name, to describe the availability or nature of its legal services or legal service benefits. This rule does not prohibit limited and dignified identification of a lawyer as a lawyer as well as by name:

* * *

"(6) In communications by a qualified legal assistance organization, along with the biographical information permitted under DR 2-102(A)(6), directed to a member or beneficiary of such organization."

DR 2-101(B) makes clear that it must be the organization that promotes the legal service plan, whether it be through "commercial publicity" or "in communications ... directed to a member or beneficiary". However, a lawyer is permitted to "assist" the organization in the organization's use of dignified commercial publicity. Such assistance may properly include the furnishing of information and preparation of material describing the nature of the legal services available.

The Rule distinguishes between "commercial publicity" and "communications ... directed to a member or beneficiary". In the latter case, unlike the former, the lawyer may be identified and certain biographical information furnished. In consonance with the underlying objective of the amendments, it would be permissible to include in such communications the particular fields of law in which the lawyer concentrates and a schedule showing the cost to the members or beneficiaries of the various types of legal services available. N.Y. State 417 (1975). Such schedule should disclose relevant factors, if any, that might affect the stated fee, or where applicable, that there are variables which will affect the fee and which will be explained to the client prior to retainer.

The Rules does not expressly limit "communications" to those sent in response to inquiries, and accordingly, they may be sent by an organization to its membership at large without preliminary request therefor. Cf. ABA Inf. 1298 (1974). ABA 334 (1974) is not applicable in view of the provisions of DR 2-101(B)(6) as subsequently adopted.

Although a lawyer is permitted to cooperate with a qualified legal assistance organization that recommends his services in communications directed to its members or beneficiaries, as provided in DR 2-101(B)(6), he may not distribute or cause to be distributed or pay the cost of publishing, printing or mailing such material, and thus use the organization as an indirect means of soliciting legal business, in violation of

DR 2-103(A). See also DR 2-103(B), DR 2-103(D)(4)(b) and (c). Cf. Judiciary Law, Sec. 479.

There is currently widespread discussion within the legal profession as to the propriety of further liberalizing restrictions on advertising by lawyers. This opinion is an interpretation of the Code provisions as they presently exist, and which do not permit lawyers to publicize themselves except as provided by the Rules.

This entire opinion is based upon the assumption that the organization circulating the brochure is a bona fide legal assistance organization, the brochure is dignified, the material does not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.
