



Committee on Professional Ethics

Opinion #458 - 1/21/77 (125-76) Topic: Newsletter; improper solicitation.

Digest: Circumstances under which law firm may distribute newsletter bearing its name that has been prepared by others.

Code: EC 2-2, 2-3, 2-4, 2-5, 9-6
DR 2-101(A) and (B), 2-103,
2-104.

QUESTION

Under what circumstances may a law firm distribute a newsletter bearing its name which has been prepared by others?

OPINION

N.Y. State 63 (1967) held that a lawyer could properly distribute to his clients a "monthly form letter" describing various changes in the law which might be of interest to them.

In N.Y. State 211 (1971) we held that it was permissible for a lawyer to distribute to his clients and friends certain bar association publications which did not refer to any specific lawyer or law firm by name, explaining:

"This exception to the prohibition against advertising and against the suggestion of the need for legal services is permitted if motivated by a desire to benefit laymen and the public and is carried out in such a way as to obviate the impression that such is being done to increase professional employment. EC 2-2; EC 2-3; EC 8-3; DR 2-104; ABA 121 (1934); ABA Inf. 846 (1965).

"Distribution of these pamphlets to friends and clients or under such circumstances as will not give rise to the appearance that the distribution is for personal gain is commendable. Thus, the distribution of such pamphlets as a teaching aid to a class is permissible provided there is not contained thereon or therein the name of the attorney teacher, lawyer or law firm that may have procured and distributed such pamphlets."

Most recently, in N.Y. State 401 (1975) we held that it was not improper for a law firm to permit its name to appear on a newsletter which it had prepared for one of its clients which was then distributed by that client in the course of its business to persons with whom the law firm had no professional relationship. We explained:

"The publicity or advertising involved in such naming of the lawyer or lawyers and the law firm is outweighed by the legitimate purpose of identification of the author of

the publication. The client should not promote its newsletter by reference to the competence or experience of the law firm or lawyer who prepared the newsletter, or in any other way advertise the ability or reputation of the firm or lawyer or state that it or he are specialists in the field. The law firm and the lawyer have affirmative obligations to endeavor to see to it that all publicity concerning the newsletter conforms to proper standards. [citations omitted] If such standards are adhered to, a dignified statement in the newsletter to the effect that the newsletter was prepared by a named lawyer affiliated with a named law firm is permissible."

We are now asked whether a law firm may distribute a newsletter to its clients as well as persons, other than clients, who are described as having some professional relationship with the firm. The proposed newsletter would bear the firm name and clearly explain that it was prepared and published by an independent service organization.

The question posed requires striking a balance between those provisions of the Code which encourage lawyers to represent their clients fully, as well as to assist laymen generally in the recognition of legal problems, against those provisions which prohibit lawyers from improperly soliciting employment. Cf., EC 2-2, EC 2-3 and EC 2-4 with DR 2-101, DR 2-103 and DR 2-104.

Consistent with our prior opinions, we find no ethical impropriety in a law firm causing the subject newsletter to be distributed to its clients, provided full disclosure of its origins is made and the clients are cautioned not to attempt to resolve their individual problems solely on the basis of the information contained therein. See, EC 2-5. There is little, if any, danger of solicitation under such circumstances since the law firm would be communicating with persons who have already retained it to render some professional service. The fact that the material may go beyond the scope of its present retainer is of no significance to the ethical rule.

Where the firm does not represent the individuals to whom it is proposed the subject materials be addressed, however, a somewhat different standard must apply for the appearance of solicitation in communicating with these persons is substantially greater.

Since the newsletter identifies the firm by name and its contents deal with matters of law which under the most favorable circumstances could not be of more than general interest, its distribution to persons who are not clients of the firm would inevitably create the appearance of solicitation. Accordingly, distribution of the proposed newsletter to persons who are not clients of the firm would be improper. See, DR 2-101(A) and (B); also see, EC 9-6.
