



COMMITTEE ON PROFESSIONAL ETHICS

Opinion 839 (3/16/10)

- Topic:** Group radio advertising.
- Digest:** Group radio advertisement that does not broadcast the lawyer's name, principal law office address and telephone number, but instead directs listeners to contact an agent who provides that information, is prohibited under Rule 7.1(h).
- Rule:** 7.1(h)

QUESTION

1. May a lawyer participate in a group radio advertisement that does not broadcast the lawyer's name, principal law office address and telephone number?

OPINION

2. A lawyer would like to participate in a group radio advertisement in which the lawyer's name and contact information would not be included in the broadcast. Instead, listeners would be directed to call or visit the website of an agent who would provide the lawyer's name, address and telephone number to any listener who identified himself as a New York State resident. In giving out that directory information, the agent would exercise no discretion. The inquirer asks whether this format would comply with N.Y. State 597 (1989), in which this Committee determined that in certain circumstances a lawyer could ethically participate in group television advertisements aimed at persons with particular types of legal problems. Specifically, N.Y. State 597 (at p. 3) did not prohibit a lawyer from participating in a group advertisement:

if the advertisement presents in a meaningful fashion the names of the lawyers or law firms participating in the group advertisement, along with their addresses and the geographical areas assigned to them, so that the potential client knows the identify of the lawyer to whom his call will be referred and there is no discretion in referrals on the part of the advertising agent.

3. As we recognized in N.Y. State 597, the court rules then in effect in each of the four Appellate Divisions provided: "All advertisements of legal services shall include the

name, office address and telephone number of the attorney or law firm whose services are being offered” (N.Y. State 587, p. 2, n. 1). That rule is continued nearly verbatim in Rule 7.1(h), which provides: “All advertisements shall include the name, principal law office address and telephone number of the lawyer or law firm whose services are being offered.” Here, the proposed advertisement will not present the information required by Rule 7.1(h). Rather, an advertising agent will provide the lawyer’s name and contact information in response to a listener request. That method does not evidence the presentation “in a meaningful fashion” *in the advertisement* of the lawyer’s name, address and assigned geographical area. It thus falls short of what N.Y. State 597 contemplated. Accordingly, we are constrained to conclude that Rule 7.1(h) prohibits the inquirer from participating in the proposed group radio advertisement.

4. We recognize that, as a practical matter, our conclusion precludes lawyers from participating in group advertising on the radio if the group consists of more than a few participants. Unlike a group television advertisement, in which lawyer directory information for many lawyers might be scrolled across the screen during a voice over, a radio spot does not lend itself to broadcasting lengthy lists. Nonetheless, Rule 7.1(h) is clear and unambiguous, and permitting a group radio advertisement that does not present the names and addresses of all participating lawyers in the advertisement itself would require amendment of the Rule. We urge the State Bar and the Courts to give such an amendment serious attention.

CONCLUSION

5. We answer the question in the negative. A lawyer may not participate in a group radio advertisement that does not broadcast the lawyer’s name, principal law office address and telephone number.

(44-09)