

Advisory Opinion 1987-8

Factual Situation:

Two attorneys have requested opinions regarding the ethical considerations involved in providing information about prepaid legal services to clients. Specifically, one attorney wants to know if he may enclose a brochure in his billings to his clients. Although it is not clear from his request, the attorney presumably will provide legal services to persons who are or become members of the prepaid legal service program. The second attorney wants to know if he may refer clients to a prepaid legal service. In the past, the second attorney has provided legal services to individuals who were members of the prepaid legal service.

Question Presented:

To what extent may an attorney disseminate information concerning prepaid legal services?

Answer:

It is not a violation of the Code of Professional Responsibility adopted by the New Mexico Supreme Court effective January 1, 1987 for an attorney to provide information about prepaid legal services to clients or to the general public.

Discussion:

The Advisory Opinions Committee has adopted two formal opinions relating to prepaid legal referral services and the third is pending. These opinions are 1983-1, 1984-12, 1987-

In Opinions 1983-1 and 1987- , the Advisory Opinions Committee was presented with the question of whether a lawyer may utilize the referral services of a private referral service, which would charge the lawyer a fee. The Committee in Opinion 1983-1 concluded that an attorney would violate Rule 2-103 of the former Code of Professional Responsibility by utilizing the services of a referral organization. The referral organization was a private referral service, not approved by the State Bar of New Mexico. It charged an initial fee to its lawyer members for organizational costs, advertising, and production and also assessed its lawyer members periodic fixed charges for advertising referrals which were not directly or indirectly determined by the amount of referrals or the clients which the lawyer received.

A similar conclusion was reached in opinion 1987- both under the former Code of Professional Responsibility and also under the current Rules of Professional Conduct effective January 1, 1987. In that request, a private, for-profit referral service, which was not sponsored or approved by the State Bar of New Mexico, proposed to charge attorneys an "advertising fee" for each referral made, although it was not providing advertising or communication services for any specific attorney.

Opinion 1983-1 though, did recognize the duty the legal profession has to educate the public as to its legal needs and to provide information relevant to the selection of the most appropriate counsel. The duty formed the basis for the conclusion reached in Opinion 1984-12.

In opinion 1984-12, the Committee was presented with a question of whether an attorney could have prepaid legal service materials available in his office for public dissemination. The Committee concluded that the attorney, who was a provider of legal services under the program, could disseminate information on prepaid legal services in his office, but cautioned the attorney not to disseminate the information in a manner that ran afoul of advertising and solicitation prohibitions.

The Rules of Professional Conduct effective January 1, 1987 provide in Rule 160-702:

(A) Subject to the requirements of Rule 16-701, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor, radio or television or through written communication not involving personal solicitation

(C) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable costs of the advertising or the reasonable costs of preparing the communication which is permitted by this rule and may pay the usual charges for a not-for-profit lawyer referral service or other legal service organization.

(D) Any communication made pursuant to this rule shall include the name of at least one lawyer responsible for its content.

Rule 16-701 admonishes a lawyer not to make a false or misleading communication about the lawyer or the lawyer's services and defines certain circumstances under which a communication is false and misleading.

The Committee finds the attorneys' desire to inform the public of the availability of legal services healthy and in conformity with the ethical goals of the profession. The attorneys, however, must be careful to comply with the advertising and solicitation provisions of Rules 16-701 and 16-702 of the Rules of Professional Conduct. The attorneys are particularly cautioned to avoid personal solicitation. The Committee interprets "personal solicitation" to include contact in person, by telephone or telegraph, by letter or other writing, or by other communication directed to a specific recipient. It would not include letters addressed or advertised in 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. Although it is not absolutely clear from the Rules of Professional Conduct effective January 1, 1987, the Committee does not believe that including a brochure in a billing to a current client is an ethical violation.