

INDIANA STATE BAR ASSOCIATION
LEGAL ETHICS SUBCOMMITTEE

OPINION NO. 1 of 1976

Ethical Considerations Regarding Lawyer List
Distributed by State Funded and Operated Commission

The Legal Ethics Subcommittee of the Indiana State Bar Association has been presented with the question:

"What are the ethical considerations regarding an attorney or law firm, whose name has been included on a lawyer referral list endorsed and distributed by a State-Funded and State-Operated Commission?"

The applicable Indiana Disciplinary Rule is DR 2-103(C), which provides:

(C) A lawyer shall not request a person or organization to recommend employment, as a private practitioner, of himself, his partner, or associate, except that he may request referrals from a lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists and may pay its fees incident thereto.

The Indiana Code of Professional Responsibility differs from the American Bar Association Code of Professional Responsibility [cited below]. A.B.A. DR 2-103 (C) provides:

A lawyer shall not request a person or organization to recommend or promote the use of his services or those of his partner or associate, or any other lawyer affiliated with him or his firm, as a private practitioner, except that:

(1) He may request referrals from a lawyer referral service operated, sponsored, or approved by a Bar Association and may pay for its fees instant thereto.

(2) He may cooperate with the legal service activities of any of the offices or organizations enumerated in DR 2-103(D)(1) through (4) and may perform legal services for those to whom he was recommended by to do such work if:

(a) The person to whom the recommendation is made is a member or beneficiary of such office organization; and

(b) The lawyer remains free to exercise his independent professional judgment on behalf of his client.

Under the A.B.A. Code, one of the permissible offices or organizations included within DR 2-103(D)(1)(c) are organizations or offices operated or sponsored by a government agency. Thus, a lawyer referral list sponsored and distributed by a State-Funded and State-Operated Commission to persons who are intended to benefit from the Commission, would be permissible under the A.B.A. version of the Code. See Res Gestae, March, 1975, p. 79.

Much has been recently written with regard to the delivery of legal services to the public. The decisions in this area are of great importance and have significant ramifications. Inasmuch as the Indiana Supreme Court has not yet amended the Indiana Code of Professional Responsibility in this regard, the Legal Ethics Subcommittee must render this opinion pursuant to the Indiana Code of Professional Responsibility as it presently exists.

The lawyer referral list in the present case is not distributed, sponsored or approved, in any way, by local bar associations. Therefore, for an attorney, licensed to practice in the State of Indiana to allow one's name, his partner's or associate's name or law firm, to be included upon such a list would be unethical.

INDIANA STATE BAR ASSOCIATION
LEGAL ETHICS SUBCOMMITTEE

OPINION NO. 2 of 1976

Ethical Considerations Regarding the Participation
by a Local Attorney in a Local Television Series or
in the Authorship of a Series of Local Newspaper Articles

The Legal Ethics Subcommittee of the Indiana State Bar Association has been presented with the question:

"What are the ethical considerations regarding a local attorney, participating in a television series (weekly or monthly), or writing a series of articles in a newspaper, devoted to the discussion of various legal matters in general terms?"

The applicable Disciplinary Rule is DR 2-101 (Publicity in General), and it provides:

(A) A lawyer shall not prepare, cause to be prepared, use, or participate in the use of, any form of public communication that contains professionally self-laudatory statements calculated to attract lay clients; as used herein, "public communication" includes, but is not limited to, communication by means of television, radio, motion picture, newspaper, magazine, or book.

(B) A lawyer shall not publicize himself, his partner, or associate as a lawyer through newspaper or magazine advertisements, radio or television announcements, display advertisements in city or telephone directories, or other means of commercial publicity, nor shall he authorize or permit others to do so in his behalf except as permitted under DR 2-103. This does not prohibit limited and dignified identification of a lawyer as a lawyer as well as by name:

(1) In political advertisements when his professional status is germane to the political campaign or to a political issue.

(2) In public notices when the name and profession of a lawyer are required or authorized by law or are reasonably pertinent for a purpose other than the attraction of potential clients.

(3) In routine reports and announcements of a bona fide business, civic, professional, or political organization in which he serves as a director or officer.

(4) In and on legal documents prepared by him.

(5) In and on legal textbooks, treatises, and other legal publications, and in dignified advertisements thereof.

(C) A lawyer shall not compensate or give anything of value to representatives of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item.

The exceptions to DR 2-101(B) under DR 2-103 and DR 2-101(B) while literally are not applicable to the present issue, are illustrative of permissible publicity.

In light thereof, the Legal Ethics Subcommittee is of the opinion that an attorney may write local newspaper articles about general legal topics, and appear upon local television shows concerning general legal topics. However, such public exposure must conform with the guidelines set out in DR 2-101, the applicable decisions and this opinion.

DR 2-101(A) is primarily directed at conduct that is pure advertising, or resembles advertising. Articles written to educate the public to recognize legal problems are permissible. EC 2-2. There is no ethical or other valid reason why an attorney may not write articles on legal subjects for magazines and newspapers. A.B.A. Opinion 162 (1936). There is a distinction between teaching the lay public the importance of securing legal services preventive in character, and the solicitation of professional employment by one or for a particular lawyer. A.B.A. Opinion 179 (1938).

In addition, DR 2-104(A)(4) provides:

(A) A lawyer who has given unsolicited advice to a layman that he should obtain counsel or take legal action shall not accept employment resulting from that advice, except that:

(1) A lawyer may accept employment by a close friend, relative, former client (if the advice is germane to the former employment), or one whom the lawyer reasonably believes to be a client.

(2) A lawyer may accept employment that results from his participation in activities designed to educate laymen to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services if such activities are conducted or sponsored by any of the offices or organizations enumerated in DR 2-103(D)(1) through (5), to the extent and under the conditions prescribed therein.

(3) A lawyer who is furnished or paid by any of the offices or organizations enumerated in DR 2-103(D)(1), (2), or (5) may represent a member or beneficiary thereof, to the extent and under the conditions prescribed therein.

(4) Without affecting his right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as he does not emphasize his own professional experience or reputation and does not undertake to give individual advice.

(5) If success in asserting rights or defenses of his client in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept, but shall not seek, employment from those contacted for the purpose of obtaining their joinder.

In discussing the language of Disciplinary Rule 2, the California Supreme Court stated with respect to television talk-show appearances: "[T]his language does not however, nor could it constitutionally, keep attorneys off the media altogether. The Bar need have demonstrated that petitioner solicited business for his law practice on the media themselves. Mere public exposure is not sufficient." Belli v. State Bar of California, 10 Cal. 3d 824, 519 P.2d 575 (1974).

An attorney should always keep in mind the several Disciplinary Rules which govern an attorney's conduct in the situations; namely, DR 7-107 (Trial Publicity), DR 7-108 (Communication with or Investigation of Jurors), DR 7-109 (Contact with Witnesses), and DR 7-110 (Contact with Officials). An attorney's conduct in preparing a newspaper article or during a television appearance must conform to the above Disciplinary Rules. In addition, there are several other guidelines that should be followed.

The format of both newspaper articles and television appearances should be such so that the inherent publicity in such activities will be kept at a minimum. An attorney cannot be portrayed as a free legal advisor for the readers or the viewers. A.B.A. Opinion 162 (1936). Neither can he be portrayed as being in the position of soliciting business via his television appearances or newspaper articles. DR 2-101(B).

While it is permissible to make public the name of the attorney writing the article or making a television appearance and the fact that he is an attorney, it would be improper to publicize any firm affiliations or business addresses or phone numbers. It would also be improper for the attorney to publish his educational background, biographical background, areas of specializations, legal experiences, or to make any self-laudatory statements whatsoever.

The Legal Ethics Subcommittee feels that it should caution attorneys to seriously consider and evaluate their motives before engaging in such conduct. They should also seriously consider and evaluate the benefits that will result from their exposure, and weigh these benefits against the foreseeable effects on the profession, the local Bar, and the attorney himself.