

The Supreme Court of Ohio

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OPINION 2015-2

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Direct In-person Solicitation of Prospective Clients at Seminars

SYLLABUS: A lawyer may present a legal seminar to prospective clients and may make brochures and law firm information available near the exit of the seminar. A lawyer may not meet contemporaneously with prospective clients who attend the legal seminar to answer legal questions, even if the attendees sign up to do so in advance. An exception exists for lawyers providing pro bono legal services. Finally, the “prior professional relationship” exception under Prof. Cond. R. 7.3(a) does not apply to prospective clients who are employees of an existing organizational client of the presenting lawyer.

QUESTIONS PRESENTED:

- 1) May a lawyer present a legal seminar to prospective clients and provide brochures and folders with firm information at the entrance or exit of the seminar?
- 2) May a lawyer stay after a seminar to answer follow-up questions of attendees or meet with attendees who sign-up to meet with a lawyer in advance of the seminar?
- 3) May a lawyer, during the course of presenting at a firm-sponsored seminar, make an offer of services to attendees, all of whom are employees of the existing organizational client of the firm? Does a “prior professional relationship” exist in that situation?

OPINION: A lawyer seeks the Board’s guidance regarding direct in-person solicitation at legal information seminars. Specifically, the lawyer asks whether certain practices

comply with the in-person solicitation and written marketing rules under Prof. Cond. R. 7.3 when presenting at a seminar.

Background

Prof. Cond. R. 7.3 governs a lawyer's direct contact with prospective clients and prohibits in-person, live telephone, or real-time electronic solicitation of clients unless the person contacted is a lawyer, family, close personal friend, or has a prior professional relationship with the lawyer. Prof. Cond. R. 7.3(a). The rationale for the rule is to protect prospective clients from the "potential for abuse" and overreaching. Prof. Cond. R. 7.3, Comment [2]. Additionally, a prospective client "may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately."¹ *Id.*

A "solicitation" is defined as:

a communication initiated by lawyer directed to specific person and offers to provide, or reasonably understood as offering to provide, legal services. A lawyer's communication typically is not a solicitation if (a) directed to the general public—billboard, internet ad, website, or commercial, (b) in response to request for information, or (c) automatically generated in response to internet search.

Prof. Cond. R. 7.3, Comment [1]. Prof. Cond. R. 7.3 does not apply to communications sent in response to requests from clients or others. Prof. Cond. R. 7.3, Comment [8].

Prior to the adoption of the Rules of Professional Conduct in 2007, the Board addressed direct solicitation and advertising issues under the former Code of Professional Responsibility, including the dissemination of materials by lawyers to prospective clients, but not regarding legal seminars. See Adv. Op. 87-007; Adv. Op. 99-5.

Following the adoption of the Rules in 2007, the Board addressed the application of the advertising rules in two opinions. Advisory Opinion 2013-2 addresses direct contact with prospective clients regarding text messages, and Advisory Opinion 2007-5

¹ Prof. Cond. R. 7.3(a)(1) is not applicable to situations where a lawyer solicits another lawyer, as there is not "a serious potential for abuse when the person contacted is a lawyer." Prof. Cond. R. 7.3, Comment [5]. As a result, this opinion does not apply to lawyers conducting seminars for other lawyers.

addresses the issue of a lawyer's advertising through a personalized letter to a prospective business client under Prof. Cond. R. 7.3(c). Neither opinion directly addresses the questions presented here.

Answer to Question 1:

A lawyer may present an informational legal seminar to prospective clients. The lawyer also may place law firm brochures and information near the exit of the seminar, provided the lawyer does not personally distribute the materials to attendees.

Under the former Code, the Board determined that a lawyer may conduct a legal seminar and may promote or advertise a legal seminar provided the advertisement is not false, fraudulent, misleading, or deceptive. Adv. Op. 87-007. Under former DR 2-101(B)(3), brochures were permitted to be "disseminated directly," but it was deemed improper for a lawyer, or a third party on the lawyer's behalf, to personally distribute law firm brochures at a street corner, at a booth at a fair, at a church festival, or at other similar events. Adv. Op. 99-5. As a result, certain methods of dissemination were deemed permissible, including placing brochures in an advertising bag with other ads for doorstep distribution, mailing brochures to the general public, mailing brochures with a direct mail solicitation letter in compliance with the rules, or placing brochures on counter displays in public places and private businesses. Adv. Op. 99-5. Distribution of materials at or following a legal seminar was not discussed.

Although Ohio has not directly addressed the question, other ABA Model Rule states have opined on the issue of the distribution of law firm brochures and materials at seminars. In Michigan, a law firm may set up a booth outside of a seminar to market the firm, as long as the information communicated about the firm does not violate Prof. Cond. R. 7.1, 7.2, 7.3, and the attendees have the option either to stop at the booth or to walk away. Mich. Ethics Op. RI-99 (1999). In Pennsylvania, a lawyer who presents at a seminar may leave brochures and general advertising materials regarding the firm's practice for distribution to the audience. Pa. Bar Assn. Op. 90-143 (1990). In South Carolina, a lawyer who presents at a seminar may send letters or brochures to attendees. Only the written solicitations sent to attendees known to be in need of legal services in a particular matter must comply with Rule 7.3(c). S.C. Ethics Adv. Comm. Op. 97-05 (1997); S.C. Ethics Adv. Comm. Op. 90-37 (1991). Finally, in North Carolina, under Rule 7.3, a lawyer may provide a prospective client multiple business cards or firm brochures if requested; however, the lawyer may not provide multiple business cards or brochures to a third party for in-person solicitation on the lawyer's behalf. 2007 N.C. Ethics Op. 4 .

Based on the Board's prior opinions under the former Code, as well as the opinions of other ABA Model Rule states, a lawyer who presents at a legal seminar may make available law firm brochures and information at displays near the exit of the seminar. With information available near the exit, attendees have the option either to stop or to simply walk away. A lawyer presenting at the seminar may refer to the availability of brochures and firm materials during the seminar, but neither the lawyer nor the lawyer's personal representatives may personally distribute the materials. Regardless of the method of dissemination, the information must meet all of the requirements of Prof. Cond. R. 7.1, 7.2, and 7.3.

This differs from the direct dissemination of materials discussed in Adv. Op. 99-5. Here, unlike in Adv. Op. 99-5, the lawyer will not personally distribute law firm information at the seminar. Rather, the materials will be made available for attendees to take. This is similar to a countertop display of law firm materials at a public or private business described in Adv. Op. 99-5. Additionally, the rules permit a lawyer presenting at a seminar to mail or email attendees information or brochures about the law firm using lists of seminar attendees. However, these mailings and materials must comply with Rule 7.3 and the other Rules of Professional Conduct.

Therefore, a lawyer may present a legal topic at a seminar to prospective clients and may make available law firm brochures and information at the exit of the seminar, so long as the lawyer or the lawyer's representatives do not personally distribute the information, and the information meets all requirements of the Rules of Professional Conduct.

Answer to Question 2:

A lawyer may not remain after a seminar to discuss personalized legal needs of attendees, even if attendees sign up to meet with the lawyer in advance of the seminar. Instead, if attendees wish to meet with the lawyer, the attendees should be directed to call the law office and schedule an appointment to meet with the lawyer, or be instructed to contact a lawyer of their choice.

Under the former Code, the Board recognized that a lawyer who conducts a legal seminar may accept legal employment that results from the seminar, provided the seminar does not highlight the lawyer's professional experience beyond what is permitted in the rules, the lawyer does not give individualized advice, and the lawyer does not engage in improper solicitation. Adv. Op. 94-13. A lawyer also is permitted to make general statements to seminar attendees regarding his or her availability, telephone number, address, and whether the lawyer will provide a free consultation.

Id. Further, if the lawyer recognizes that an attendee may have a legal problem or is unaware of his or her legal rights, then the lawyer should suggest the attendee seek counsel of the attendee's choice. *Id.*

Other ABA Model Rule states have adopted similar opinions. In New York, lawyers may present legal seminars to non-lawyers, but if the program discusses a lawyer's skills or reputation or gives reasons to hire the lawyer, then the lawyer must comply with the advertising rules. N.Y. St. Bar Assn. Op. 918 (2012). In Pennsylvania and Maryland, a lawyer may present a seminar to non-clients, but may not directly solicit attendees or address specific, personalized questions at the seminar. Pa. Bar Assn. Op. 90-143 (1990); Pa. Bar Assn. Op. 93-126 (1994); 42-APR Md. B.J. 61 (2009). Michigan requires lawyers to advise attendees, who wish to retain a lawyer from the firm after a legal seminar, to contact the law firm office to set up an appointment. Mich. Ethics Op. RI-99 (1999). In North Carolina, lawyers may not contact seminar attendees in-person or by phone, rather attendees must contact the lawyer; however, lawyers may request attendees to complete evaluations that include contact information and areas of interest. 2007 N.C. Ethics Op. 4.

Consistent with the Board's previous advice under the former Code, as well as the opinions from other jurisdictions under the Model Rules, the Board advises the following. After a legal seminar a lawyer may not answer specific questions of individual attendees or meet one-on-one with attendees to discuss legal issues related to the presentation or the personal legal needs of the attendees. If an attendee approaches the presenting lawyer with a personalized legal question, then the lawyer should advise that person to contact the office to make an appointment or to seek legal counsel of his or her choice. Similarly, if an attendee indicates after the seminar that he or she wishes to retain the presenting lawyer, the lawyer should advise the attendee to contact the law firm office to set up an appointment. The lawyer cannot be the person to initiate contact with the prospective client following a presentation at a legal seminar.

The Board recognizes an exception for attorneys who provide pro bono legal services contemporaneously with the presentation of a seminar. Many law school legal clinics, bar association pro bono programs, and legal aid organizations provide general legal seminars on a variety of legal topics to those who cannot afford to hire a lawyer. The ability to combine legal information and individualized brief advice in one setting when the information is offered by volunteer lawyers for the purpose of educating those who cannot afford to hire a lawyer, at no cost to the attendees, increases the access to justice, and differs from a seminar provided by a lawyer in the hope of retaining paying clients.

Additionally, the potential for abuse or overreach does not exist to the same degree, or at all, when a legal aid or other pro bono program convenes an event offering legal information at the same time as individualized brief advice. The purpose or ultimate goal of the sponsoring organizations, and the pro bono volunteers who participate, is to provide legal help to those who otherwise would not have access to a lawyer. There is no expectation that the organization or the volunteer pro bono lawyers will earn a profit or gain otherwise from retaining an attendee as a client. As a result, in these limited circumstances, pro bono services may permissibly be provided contemporaneously with the presentation of a legal seminar.

Therefore, aside from the pro bono exception, a lawyer may not conduct in-person solicitations of prospective clients after presenting a legal seminar. However, a lawyer may accept legal employment resulting from a legal seminar at which he or she presents, but contact must be initiated by the prospective client, and all requirements of Rule 7.3 must be met.

Answer to Question 3:

The “prior professional relationship” exception under Prof. Cond. R. 7.3(a) does not apply to employees of an organizational client. A lawyer may not make an offer of legal services to attendees during a firm-sponsored seminar, even if the employer of the attendees is a client of the firm. However, a presenting lawyer may make general statements to attendees regarding availability, contact and firm information, and whether the firm provides free consultations. *See Adv. Op. 94-13.*

Prof. Cond. R. 1.13 governs situations in which a lawyer represents an organization as a client. A lawyer employed or retained by an organization represents the organization acting through its constituents. Prof. Cond. R. 1.13(a). The organization is the client, and employees of the organization are not typically considered clients of the firm. The organization’s lawyer must ensure that the individual employees understand that the lawyer represents the organization as a whole, but may also represent individual employees. However, if a conflict of interest arises, the lawyer for the organization likely cannot provide legal representation for those individual employees. Prof. Cond. R. 1.13, Comment [10], [12].

If a lawyer represents an organization and, at the same time, chooses to represent an employee of that organization, the lawyer must ensure that an extensive conflict of interest analysis is conducted, and appropriate waivers are executed. Additionally, a lawyer must recognize that under the Rules of Professional Conduct certain conflicts of interest cannot be waived. *See for example, Prof. Cond. R. 1.7(c).*

The lawyer-client relationship exists between the organization and the lawyer, not the lawyer and the individual employees, and no “prior professional relationship” exists between the individual employees of the organization that exempts the lawyer from the mandates of Prof. Cond. R. 7.3. Employees of the organization who attend the seminar are considered prospective clients, and the requirements under Prof. Cond. R. 7.3 apply. Therefore, a lawyer for an organization may not make an offer of services to its employees who attend a seminar.

CONCLUSION: A lawyer may present a legal seminar to prospective clients, and may provide brochures and law firm information near the exit of the seminar. A lawyer may not meet with attendees following the seminar to answer legal questions, even if attendees sign up to do so in advance. Rather, attendees with individual legal questions should be advised to contact the lawyer’s office to schedule an appointment to meet with the lawyer, or to contact a lawyer of their choice. An exception exists for lawyers providing pro bono services who may meet with attendees contemporaneously to presenting an informational legal seminar. Finally, the “prior professional relationship” exception under Prof. Cond. R. 7.3 does not apply to seminar attendees who are employees of an organizational client of the presenting lawyer.

Advisory Opinions of the Board of Professional Conduct are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Ohio Rules of Professional Conduct, the Ohio Code of Judicial Conduct, and the Attorney’s Oath of Office.