

Utah Ethics Opinions

1973.

12. USB EAOE Opinion No. 12

Ethics Advisory Opinion No. 12

Approved August 15, 1973

[Overruled by Opinion No. 97-05]

Summary: Attorneys may not be members of barter type exchanges in which they barter their services for other professional services.

Facts: You have inquired concerning the propriety of lawyers becoming members of a barter type exchange similar to that described in a letter from the National Businessmen's Exchange, which you have attached to your inquiry.

Opinion: It appears from the letter that names of attorneys will not be listed in a directory as such, but will be available to members of the barter exchange upon request, advising members of the barter group that these particular attorneys (by name) will barter their services.

What is entailed, apparently, is a master list of attorneys who are willing to barter services, as well as other professions. Presumably in the nature of such a list it would be limited to a few attorneys.

In this regard, it would appear that such a listing would run afoul of Canon 27 of the Canons of Professional Ethics, which states in part:

"It is unprofessional to solicit professional employment by circulars, advertisements, through touters or by personal communications or interviews not warranted by personal relations."

In passing on a question similar in import to your own, involving solicitation by attorneys by contact with lay members of the Commercial Law League, the ABA Committee on Professional Ethics in Informal Opinion 935, stated:

"It would make no difference whether the League member contacted be lawyers or laymen. The solicitation of professional employment from lawyers is as improper as is the solicitation of laymen."

Formal Opinion 145 states that:

"The Canons of the Association and the opinions of this Committee condemn solicitation of professional employment both from lay public and other lawyers. "

DR 2-101(B) of the new Code of Professional Responsibility, the successor to the Canons of Ethics provides:

"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 directory, 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."

It would appear that the proposal involved would, in fact, constitute such publicizing as is frowned on by this rule, since the name or names would be publicized upon request even though not contained in a published pamphlet or list.

More conclusive, however, is the interdiction of DR 2-103(B) and (C) quoted below:

"(B) Except as permitted under DR 2-103(C), a lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client, or as a reward for having made a recommendation resulting in his employment by a client.

A Lawyer shall not request a person or organization to recommend employment, as a private practitioner, or 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."

We would conclude that the proposal as contained in your letter and the letter of the National Businessmen's Exchange would be a improper activity for a lawyer.