

Utah Ethics Opinions

1979.

61. USB EAOC Opinion No. 61

Utah State Bar

Ethics Advisory Opinion No. 61

Approved April 12, 1979

Summary: A law firm may advise only regular clients of a seminar it offers on a particular subject.

Facts: The Ethics Committee has been asked to comment on the ethical propriety of a law firm sending letters to lay persons inviting them to attend the firm's annual tax seminar. The purpose of the seminar is to analyze the Revenue Act of 1978 and various other areas of taxation and estate planning. It is not known if this letter is sent to only clients or to other people in addition.

Opinion: This problem must be examined under the provisions of two sections of Canon 2. DR 2-103 (A) states that "[a] lawyer shall not, except as authorized in DR 2-101(B), recommend employment as a private practitioner, of himself, his partner, or associate to a lay person who has not sought his advice regarding employment of a lawyer." Further guidance is found in DR 2-104(A)(1) providing as follows: "A lawyer who has given in-person unsolicited advice to a lay person 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."

A related problem was discussed at some length in ABA Informal Decision 809 (1965). A law firm offered a seminar for clients or possible clients concerning fair employment provisions of the Civil Rights Law and Equal Pay Law. The Committee noted the holding of Formal Opinion 169 that it was unethical for an attorney "to offer legal services gratuitously to any organization or association with the expectation ultimately of profiting thereby." However, the Committee did point out that there were situations where such contact would be proper.

"It would be ethical and proper for a firm of attorneys, by letter or other appropriate communications sent directly to clients whom they regularly represent, to advise them of a seminar on the subjects to be held by the attorneys.

However, the announcement of the seminar was not sent by the association. No doubt, some of those who received the newsletter were not regular clients of the attorney. The announcement, in effect, extends an invitation for all members to attend and make reservations."

Because of the nature of the recipients of the letter, the activity was found to be improper under former Canon 27.

The Committee went on to provide a definition of "clients" as follows: "A person or corporation who regularly employed the firm or attorneys or at least employed them on matters related to the legal problems to be discussed in the seminar. The Committee does not believe, merely because the firm represents an association, that all members of the association could be termed its clients. Some members, no doubt, are represented by the firm that is counsel for the association. The Committee then quoted with approval, a portion of Formal Opinion 213 (1941) which states as follows:

"It is not improper for a lawyer to advise his regular clients of new statutes, court decisions, and administrative rulings which may affect the client's interest, but any communications of that nature from the lawyer should be confined to clients by whom the lawyer is regularly and customarily retained in matters of such nature that the communication is relevant."

Therefore, the letter as described herein would be permissible if sent to only regular clients of the law firm. A wider mailing list would be prohibited under the provisions of Canon 2. Reference should be made to the definition of "clients" provided above.

Rule Cited:

Canon 2