

Utah Ethics Opinions

1986.

75. USB EAOC Opinion No. 75

Utah State Bar

Ethics Advisory Opinion No. 75

Approved February 21, 1986

Facts: Several attorneys have requested an opinion regarding the propriety of mailing a solicitation letter to specific groups of potential clients. The proposed letters are addressed to groups such as financial institutions, mortgage lenders, or general contractors within a specific city or county.

Opinion: Canon 2, DR 2-101(H)(2) states:

(2) A lawyer may initiate written contact with prospective clients in the following circumstances:

(a) By a general mailing, not concerning a specific case, cause of action, transaction or other such event. (b) By direct mail under the auspices of a public or charitable legal services organization or a bona fide political, social, civic fraternal, employee, or trade organization whose purposes include, but are not limited to providing or recommending legal services.

The debate regarding this rule has centered around the phrase "a general mailing, not concerning a specific case, cause of action, transaction or other such event."

This language is subject to two interpretations. It could be interpreted to mean that lawyers may not send general mailings to specific groups of prospective clients. Under this interpretation the word "specific" relates to specific groups of people.

It could also be interpreted to mean that lawyers may send general mailings to specific groups of prospective clients but may not send mailings concerning specific cases or causes of action, etc. According to this view, "specific" relates to cases rather than groups.

The latter view appears to be more consistent with the intent of the drafters. "Specific" modifies case, cause of action, etc. The rule is intended to prohibit lawyers from contacting prospective clients following a specific event such as an airplane crash or mine disaster. By proscribing contact regarding specific events, the rule protects the public from the dangers of solicitation. Similarly, by

allowing mailings to specific groups, the rule facilitates the free flow of information regarding legal services to consumers and allows for open competition.

The prospective clients contacted may presently have attorneys handling their cases. These relationships would be governed by the existing contracts between the attorney and the client. However, in future cases, the client could hire another lawyer. The general mailings envisioned by the rule would allow the contacted groups to evaluate alternative lawyers and choose their future legal advisor accordingly. However, attorneys who contact prospective clients pursuant to DR 2-101(H) must also comply with the general provisions governing attorney advertising in Canon 2.

Rule Cited:

Canon 2

DR 2-1-01