

# ADVISORY ETHICS OPINION 81-12

## **SYNOPSIS:**

An attorney may not make a direct mailing to potential clients wherein the fees the attorney would charge are set out.

## **QUESTION PRESENTED:**

May a Vermont attorney make a direct mailing to a class of potential clients in which the attorney sets forth a fee schedule which the attorney would charge for certain services.

## **DISCUSSION:**

DR 2-101 of the Vermont Professional Responsibility Code, entitled "Publicity in General" sets out what advertising attorneys in Vermont may ethically engage in. The Rule specifies in subsection (D) certain types of advertising which are permitted, notwithstanding the general prohibition on publicity contained in the code.

A lawyer is permitted to advertise the type of information which the attorney here wishes to make available, but only through "written commercial advertising media." The code defines the phrase written commercial advertising media as follows:

- (a) A commercial publication put out by a person or entity other than the lawyer whose publicity is contained therein and including non-commercial information or news;
- (b) Community or city directories or lists, telephone directories, law lists or legal directories or other similar printed business directories or lists.

Since individual mailings do not fit the definition of written commercial media advertising, the advertising proposal is not permitted under the Code. Accordingly, to send out the proposed letter would constitute a solicitation of employment in violation of DR 2-103(A).

The attorney who submitted this request inferred that there may be a constitutional right to engage in the advertising described.<sup>1</sup> However, until the applicable section of the Vermont Code of Professional Responsibility is amended or adjudged to be unconstitutional, it is the guide which the Committee must apply to the actions of Vermont lawyers.

As a matter of information, the type of communication proposed would be permitted under the proposed Model Rules of Professional Conduct, subject to limitations on the accuracy of the content, as long as no personal contact was involved and a copy of the letter was kept by the attorney for one year after its dissemination.<sup>2</sup>

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<sup>1</sup> See *In re R.M.J.*, 50 U.S.L.W. 4185 (U.S. Jan. 25, 1982); *Kentucky Bar Assn. v. Stuart*, 568 S.W.2d 933 (Ky. 1978); *Koffler v. Joint Bar Assn.*, 51 N.Y.2d 140, 412 N.E.2d 47, 432 N.Y.S.2d 872 (1980).

<sup>2</sup> See Model Rules of Professional Conduct, Rule 7.2 (Proposed Final Draft, May 30, 1981); Model Rules of Professional Conduct, DR 2-101 (Alternative Draft, May 30, 1981).