

An attorney has asked the Committee to consider the propriety of a lawyer's advertisement which states that an attorney will answer all legal questions on the telephone for a period of a year in return for a specified sum.

The appropriate and controlling Disciplinary Rules relative to your inquiry are DR:2-101(A), DR:2-103(A)(1), (2) (Advertising and Solicitation); DR:4-101(B) (Confidences and Secrets); DR:5-105(C), (D) (Multiple Representation Impairing Lawyer's Judgment); and DR:6-101(A) (Competent Representation).

Disciplinary Rules 2-101(A) and 2-103(A)(1) and (2) provide that a lawyer shall not, on behalf of himself or any other lawyer affiliated with him or his firm, use or participate in any form of public communication, including in-person solicitation as a private practitioner, if such communication contains a false fraudulent, misleading, or deceptive statement or claim. (DR:2-101(A) and DR:2-103(A)(1)) In addition, a lawyer shall not engage in any in-person solicitation on behalf of himself or any member of his firm if such communication has a substantial potential for or involves the use of coercion, duress, compulsion, intimidation, threats, unwarranted promises of benefits, overpersuasion, overreaching, or vexatious or harassing conduct, in light of the sophistication of the legal matter in question, the mental state and circumstances of the person to whom such communication is being direct. (DR:2-103(A)(2))

The Committee directs your attention to LE Op. 369 in which the Committee opined that because of a client's legal right to select or discharge counsel, giving advice of a general nature, for example, to a person seeking a second opinion, was “authorized by law” and was not deemed improper. However, the Committee believes that the statement “We will answer all legal questions on the telephone” is misleading because not all legal questions can be answered by one or two telephone calls and may require legal research or investigation which would entail more than general advice and may not be appropriate if the client has other legal counsel. Thus, a lawyer answering legal questions over the telephone without the benefit of a thorough investigation of the legal claim, may not be in a position to competently prepare and represent the interests of a client, pursuant to DR:6-101(A).

In addition, the Committee believes that, whenever a lawyer provides any legal advice to another whether by in-person communication or written communication, an attorney-client relationship has been established and, as such, the lawyer must adhere to the proscriptions against revealing or using information gained during the course of the representation which is confidential or is a secret to the disadvantage of the client, or to a third party's or his own advantage. (See DR:4-101(B)(1), (2) and (3)) The lawyer engaging in the in-person communication in question with a prospective client must be mindful of any potential conflicts which may arise when the attorney is unable to exercise his independent professional judgment in behalf of a client because of a present or former representation. (See DR:5-105(C) and (D))

It is the opinion of the Committee, therefore, that the statement in the advertisement, “We will answer all legal questions on the telephone,” is misleading and deceptive since it is making a promise that the lawyer may not be in a position to keep in light of the

attorney's competence in the specific area of law related to the matter in question and whether the attorney can adequately represent the interests of the client without diluting his loyalty to another client. The Committee also strongly recommends the attorney review the Ethical Considerations related to Canon 2 regarding advertising and public communications, particularly EC:2-9, when contemplating any in-person communication whereby the attorney may anticipate that the use of his legal knowledge and skill will be sought by the person to whom the communication is made. (See DR:2-103(A)(1) and (2))

Committee Opinion  
February 27, 1990