

You have enclosed a copy of a letter which your client recently received from attorney X along with an accompanying card from attorney X's firm which attorney X requested your client's employees distribute to their customers. The letter stated that "many Virginians are involved in automobile accidents every year and though most people are aware of the obvious steps to take, immediately following an accident, firm X has found that individuals may be too upset to think of the less obvious steps which also need to be taken." The letter goes on to say that because of the need for advice under these stressful circumstances, firm X has prepared wallet-sized cards which contain important step-by-step instructions for those involved in automobile accidents. Attorney X enclosed a few of the cards for your client's inspection, and stated that as a public service, firm X would make the cards available to your client free of charge for your client's customers in any quantity that your client would want.

You wish to know whether or not this letter is proper.

Disciplinary Rule 2-101(A) [DR:2-101] states that a lawyer shall not, on behalf of himself or any other lawyer affiliated with him or his firm, use or participate in the use of any form of public communication if such communication contains a false, fraudulent, misleading or deceptive statement or claim.

The Committee opines that as long as the letter and cards sent by attorney X contain no false, fraudulent, misleading or deceptive statement or claim, the letter and cards would not be improper. The Committee, however, is concerned with statement 9 of the printed card, which states "most lawyers handle accidental injury cases on a contingent fee basis -- that means they are paid only if they win your case and collect." The Committee believes this statement may be misleading and refers you to LE Op. 1029. In that opinion, the Committee found the statement "no recovery - no fee" improper.

The Committee is not convinced that the statement appearing on the card which states "distributed as a public service" is entirely true since the card is also being distributed with the hope that the accident victim will call attorney X's firm.

Finally, the Committee is concerned with the title "Virginia Automobile Accident Checklist," since it may lead readers to believe the list is sanctioned by the state of Virginia.

The Committee also refers you to LE Op. 470, LE Op. 579 and LE Op. 904.

Committee Opinion
June 14, 1988