

LEGAL ETHICS OPINION 1382

ADVERTISING AND SOLICITATION –  
CONFIDENCES AND SECRETS:  
ATTORNEY AND NONLAWYER  
INSURANCE AGENT ENGAGING IN  
PRESENTATIONS ON ESTATE  
PLANNING.

You have asked the Committee to opine as to the propriety of an arrangement whereby an attorney will contact a number of present clients and non-client acquaintances for purposes of making individual presentations in the attorney's office. The presentations will cover the need for estate planning, including wills, living wills and estate preservation. A securities broker/insurance agent, who is a friend of the attorney, will also be present at the meetings and will discuss how life insurance can be cost effective in preserving estate assets. At the close of the presentation, the attorney will ask to set up an appointment with the intention of beginning to execute an estate plan. At that subsequent meeting, the attorney will recommend types and amounts of life insurance vehicles to be included in the plan and will advise the client to see a qualified insurance agent, noting that the previously-present friend is qualified and will provide a reasonably priced product.

The appropriate and controlling disciplinary rules relative to the issues you raise are DR:2-103(A) permitting a lawyer to conduct in-person communication (solicitation for employment), provided that the communication is not false, fraudulent, misleading, or deceptive and further provided that, the communication does not take undue advantage of a potential client's vulnerability in certain circumstances; DR:3-102, prohibiting a lawyer from sharing legal fees with a nonlawyer; DR:4-101(B)(3), prohibiting a lawyer from using a confidence or secret of his client for the lawyer's own advantage or for the advantage of a third person, unless the client consents after full disclosure; and DR:5-101(A), precluding a lawyer from accepting employment if the exercise of his professional judgment on behalf of his client may be affected by the lawyer's own financial, business, property, or personal interests, except with the consent of the client after full disclosure.

Further guidance is available in Ethical Consideration 2-9 [ EC:2-9] which describes circumstances in which in-person solicitation can give rise to overreaching on the part of the lawyer. In particular, the lawyer is cautioned against in-person solicitation directed to potential clients who, by virtue of inexperience or lack of sophistication about legal services, are not capable of making informed decisions during the course of the solicitation.

The Committee has earlier opined that it is not improper for an attorney to seek representation of an accident victim by telephone or by in-person communication provided that the attorney complies with the provisions of DR:2-103(A). (See LE Op. 625) See also *Ohralik v. Ohio State Bar Assn*, 436 U.S. 447 (1978). Furthermore, the Committee has also opined that it is not per se improper for an attorney to offer free estate planning seminars to the congregations of various churches when the attorney does

Committee Opinion  
September 13, 1990

not intend to solicit business, but, if subsequently contacted by church members, would not decline representation. (See LE Op. 856.)

Of specific relevance is prior LE Op. 834, in which the Committee opined that it was not improper for an attorney to refer her legal clients to the attorney's husband, with whom she shared office space, for financial planning services provided that the attorney made full and adequate disclosure to the clients regarding her personal interest, relationship and office-sharing arrangements.

In the facts you present, the Committee is of the view that individual in-person presentations made jointly by the attorney and the securities broker/insurance agent to prospective clients would not be per se improper provided that the conduct complies with the mandates of DR:2-103(A) and the exhortations of EC:2-9. The Committee particularly cautions that the attorney not engage in overreaching or undue pressure in asking to set up the subsequent appointment for purposes of executing an estate plan. However, the Committee believes that the presence of the securities broker/insurance agent at meetings with individuals with whom an attorney-client relationship has been established would be improper absent the consent of the client after full disclosure by the attorney as required under DR:4-101(C)(1).

The Committee has some concern with your indication that "[a]t that next meeting, [in all cases], the attorney will recommend types and amounts of life insurance vehicles to be included in the plan." Clearly, it is incumbent upon the attorney, as adviser to the client, to consider the ramifications of each individual client's situation. The facts you have presented indicate a potential for blanket advice and referrals for the use of life insurance as vehicles for estate planning. While the Committee does not presume to address each client's circumstances, the Committee believes that such a blanket solution may not appropriately demonstrate the attorney's use of his independent professional judgment on behalf of each client.

Finally, the Committee notes that, under the facts you have stated, the attorney would only advise the client to see a qualified insurance agent, noting that the previously-present friend is qualified.

Committee Opinion  
September 13, 1990