

You have presented a hypothetical situation in which a law firm represents many medical providers regularly in their business and personal affairs. The firm also handles personal injury cases involving clients who are treated for their injuries by many of the same medical providers. You state that, in an effort to limit any potential conflicts of interest between the medical provider clients and the personal injury clients, the firm advises its personal injury clients during the initial consultation of the following: (1) that it represents most of the medical providers in the community; (2) that a medical provider can claim a lien in a portion of the settlement proceeds up to a statutory maximum but that the law does not require an attorney to make any payments to the medical providers out of the settlement proceeds beyond the statutory lien amounts; (3) that because it represents many of the medical providers, the firm only accepts personal injury cases in which the client agrees, in advance, that all of the medical providers will be paid in full for their services rendered to the personal injury client as a result of the personal injury to the extent that settlement proceeds are available for payment of these bills; (4) that the firm is not required to do this by law, and that other attorneys handling personal injury cases may not make this a condition of representation, and (5) that if the potential personal injury client is in agreement with this medical bill arrangement, he must sign a document authorizing the firm to pay all medical bills from the proceeds to the extent of such proceeds.

You further state that the firm has never had a client refuse to grant the authorization and that it believes that most clients want to pay their medical bills. You also state that most of the firm's medical provider clients are unaware of the arrangement with the firm's personal injury clients.

You indicate that the firm wishes to prepare a letter to its medical provider clients and to all other medical providers in the community advising them of the firm's practice of only accepting personal injury cases where the client agrees, in advance and in writing, to allow the firm to pay all outstanding medical bills related to the accident out of the settlement or trial proceeds to the extent that such proceeds are available and without regard to the lien amount. The proposed letter would also indicate that such bills would be paid from proceeds before any money is delivered to the personal injury client. Finally, the proposed letter would also state the firm's policy of attempting to give a medical provider thirty days notice prior to a summons or subpoena for his testimony.

You have asked the Committee to opine whether, under the facts of the inquiry, the letter is proper as to (1) the firm's current medical provider clients and (2) non-client medical providers.

The appropriate and controlling Disciplinary Rule related to your inquiry is DR:2-101(A) which states that a lawyer shall not participate in the use of any form of public

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communication if such communication contains a false, fraudulent, misleading or deceptive statement or claim.

The Committee believes that your inquiry as to the mailing involves primarily an issue of solicitation. The Committee has previously opined that a solicitation letter is not improper, provided that it complies with Disciplinary Rules 2-101(A) and (B). See LE Op. 862, LE Op. 904, LE Op. 1001; see also *Shapero v. Kentucky Bar Ass'n*, 486 U.S. 466 (1988).

The Committee views the letter's transmittal to the firm's current medical provider clients as normal and open communication essential to the attorney-client relationship and therefore not improper under the Code of Professional Responsibility. Regarding the propriety of the letter as to non-client medical providers, the Committee opines that the solicitation letter is not improper, as long as it does not make any false, fraudulent, misleading, or deceptive claims. The Committee is without facts to enable it to opine whether or not the soliciting firm has made any such improper claims.

Although the Committee cautions that the firm's simultaneous representation of personal injury clients and medical service providers may raise questions as to potential conflicts of interest, you requested that the Committee opine solely as to the propriety of the proposed letter. Therefore, the Committee is specifically not opining as to any issues related to multiple representation.

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