

**Nebraska Ethics Advisory Opinion for Lawyers  
No. 04-2  
(Formal Opinion 75-11 is withdrawn)**

[Note: This opinion was originally issued by the Committee on September 23, 1997, as Advisory Opinion 1803. The Committee has now determined that this opinion should be published as a Formal Opinion.]

**ISSUES ADDRESSED**

I. WHETHER A LAWYER VIOLATES THE CODE OF PROFESSIONAL RESPONSIBILITY BY PARTICIPATING IN PUBLIC SEMINARS SPONSORED BY CHARITABLE ORGANIZATIONS OR FOR-PROFIT ENTITIES WHERE THE PURPOSE IS TO BOTH EDUCATE THE PUBLIC AND GENERATE BUSINESS FOR THE SPONSORING ORGANIZATION AND THE LAWYER.

II. WHETHER A LAWYER VIOLATES THE CODE OF PROFESSIONAL RESPONSIBILITY BY SOCIALLY ENTERTAINING NON-LAWYERS AND LAWYERS FOR THE PURPOSE OF GENERATING CLIENTS AND CLIENT REFERRALS FOR ESTATE PLANNING SERVICES.

**STATEMENT OF FACTS**

Nebraska lawyers are often asked to participate in seminars sponsored by charitable organizations and for-profit entities such as banks, investment advisors and life insurance companies. The purposes of the seminars are normally two: to educate the public and to interest the public in purchasing the product or services of the sponsor. Lawyers are not compensated for their participation. The motivation for participation may be any number of things including public service, marketing efforts or pursuant to the request of a client.

A second situation presented is social entertainment by lawyers of others, including non-lawyers and lawyers, for the purpose of generating client business or referrals of clients for the lawyers estate planning services.

**APPLICABLE CODE PROVISIONS**

Canon 2: A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available.

EC 2-2: The legal profession should assist lay persons to recognize legal problems because such may not be self-revealing and often are not timely noticed. Therefore, lawyers should encourage and participate in educational and public relations programs concerning legal system with particular reference to legal problems that frequently arise. Preparation of advertisement and professional articles for lay publications and participation in seminars, lectures and civic programs should be motivated by a desire to educate the public to an awareness of legal needs and to provide information relevant to the selection of the most appropriate counsel rather than to obtain publicity for particular lawyers.

EC 2-8: Selection of a lawyer by a lay person should be made on an informed basis. A lay person is best served if the recommendation is disinterested and informed. In order that the recommendation be disinterested, a lawyer should not seek to influence another to recommend his or her employment. A lawyer should not compensate another person for recommending him or her, for influencing a prospective client to employ him or her or to encourage future recommendations. Advertisements and public communications, whether in law lists, telephone

directories, newspapers, other forms of print media, television or radio, should be formulated to convey only information that is necessary to make an appropriate selection.

DR 2-103: Recommendation of Professional Employment.

(A) A lawyer shall not give anything of value to a person for recommending a lawyers services, except that a lawyer may pay the reasonable cost of advertising or written communication permitted by these rules and may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.

DR 2-104: Personal Contact with Perspective Clients.

(A) A lawyer may initiate personal contact with a perspective client for the purpose of obtaining professional employment only in the following circumstances and subject to the requirements of paragraph (8):

(1) If the perspective client is a close friend, relative, former client, or one whom the lawyer reasonably believes to be a client,

(2) Under the auspices of a public or charitable legal services organization; or

(3) Under the auspices of a bona fide political, social, civic, fraternal, employee or trade organization whose purposes include but are not limited to providing or recommending legal services, if the legal services are related to the principal purposes of the organization.

(B) A lawyer shall not contact, or send a written communication to, a perspective client for the purpose of obtaining professional employment if,

(1) . . .

(2) The person has made known to the lawyer a desire not to receive communications from the lawyer, or

(3) The communication involves coercion, duress or harassment.

Canon 3: A lawyer should assist in preventing the unauthorized practice of law.

EC 3-3: A non-lawyer who undertakes to handle legal matters is not governed as to integrity or legal competence by the same rules that govern the conduct of a lawyer. The disciplinary rules protect the public in that they prohibit a lawyer from seeking employment by improper overtures, from acting in cases of divided loyalties, and from submitting to the control of others in the exercise of his or her judgment. Moreover, a person who entrusts legal matters to a lawyer is protected by the attorney-client privilege and by the duty of the lawyer to hold inviolate the confidences and secrets of his or her client.

Canon 5: A lawyer should exercise independent professional judgment on behalf of a client.

EC 5-1: The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of the lawyer's client and free of compromising influences and loyalties. Neither the lawyer's personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute the lawyer's loyalty to his or her client.

EC 5-21: The obligation of a lawyer to exercise professional judgment solely on behalf of his or her client requires that the lawyer disregard the desires of others that might impair the lawyer's free judgment. The desires of a third person will seldom adversely affect the lawyer unless that person is in a position to exert strong economic, political or social pressures upon the lawyer. These influences are often subtle, and a lawyer must be alert to their existence. A lawyer subjected to outside pressures should make full disclosure of them to his or her client; and if the lawyer or client believes that the effectiveness of his or her representative has been or will be impaired thereby, the lawyer should take proper steps to withdraw from representation of the client.

DR 5-101: Refusing employment when the interests of the lawyer may impair the lawyer's independent professional judgment.

(A) Except with the consent of his or her client after full disclosure, the lawyer shall not accept employment if the exercise of the lawyer's professional judgment on behalf of a client will be or reasonably may be affected by the lawyer's own financial, business, property, or personal interests.

DR 5-107: Avoiding influence by others than the client.

(A) Except with the consent of his or her client after full disclosure, a lawyer shall not:

(1) Accept compensation for the lawyer's legal services from one other than the client.

(2) Accept from one other than the client anything of value related to the lawyer's representation of or employment by the client.

(B) A lawyer shall not permit a person who recommends, employs or pays him or her to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

Canon 9: A lawyer should avoid even the appearance of professional impropriety.

## DISCUSSION

The Nebraska position on the issues presented was developed some years ago in Advisory Opinions 75-11, 81-10 and 88-4. Under these opinions, it would clearly be unethical and in violation of the Code of Professional Responsibility for either of the activities described above. Your letter suggests that the 1975 and 1981 opinions predate the general acceptance of attorney advertising and should, therefore, be reanalyzed. We agree that another look is appropriate. In doing so, we have reviewed unpublished opinions of this Committee as well as opinions from other states.

A 1993 opinion of this Committee (#1243) responded to an attorney who proposed putting on a public seminar regarding the rights of individuals involved in accidents. The lawyer proposed to specifically address the issue of solicitation of clients by making it clear to those attending the seminar that it was not intended as a solicitation of business but rather a dissemination of information to the public. The opinion referenced those of several other states and the significant disparity of authority resulting. This Committee concluded that it would not issue any blanket endorsement of participation in such seminars but that participation in educational activities is acceptable when the motivation is to educate the public. Thus the conclusions of Opinions 75-11 and 81-10 were reiterated recently. This same opinion also dealt specifically with whether a lawyer participating in an educational seminar should accept employment from a lay person attending the seminar and developed the following criteria: The lawyer should (1) not advise lay persons that they should obtain the services of a lawyer and then agree to act as such; (2) advise

the lay persons that the lawyer may not give individual legal advice during or immediately after the conclusion of a seminar, and (3) state that the lay persons would have to contact the lawyer's office for an appointment. The Committee felt that these steps would insulate the lawyer from activities contrary to Ethical Considerations 2-3, 2-4, 2-5 and 2-9. The Committee also concludes in the same opinion that a presentation at a seminar did not constitute personal contact with a perspective client described in DR 2-104 as long as nothing more than the presentation occurred.

Another unpublished opinion dated September 11, 1991, deals specifically with the issue of direct solicitation to other lawyers for referrals. The Committee concluded that such solicitation did not violate DR 2-104.

In looking to other jurisdictions, we find that many states have considered these issues. Opinion 94-3 issued in Connecticut permits a lawyer to speak at a seminar he or she arranged at the conclusion of which attendees are encouraged to fill out questionnaires to facilitate follow-up by the lawyer. Illinois Opinion 94-4 concludes that a law firm may create a relationship with a health care organization regarding health care advance directives where the health care organization actively assists the law firm in marketing and distribution of advertising for its services. The arrangement included seminars at which attendees were assisted in filling out applications. The law firm would later analyze the applications and prepare appropriate documents.. The health care organization is not permitted to state or imply that the law firm is the only firm that can provide the legal services and the state's advertising rules pertain. There was no compensation between the law firm and the health care organization.

Moving north to Michigan, we find Opinion RI-99 issued in September of 1991 holding that a law firm may co-sponsor a seminar with a local hospital featuring a lawyer as a seminar speaker and setting up a booth outside the seminar room to market the law firm's services. The opinion stated that an attendee who wished to retain the firm must contact its office for appointment.

Ohio has dealt extensively with these matters In Opinion 94-2, it was held that a lawyer may participate in educational seminars on legal issues for the public but may not offer free consultations to attendees, and may not pay the cost of conducting the seminar. In Opinion 94-13, Ohio holds that a lawyer may charge a nominal attendance fee, and may accept legal employment that results from the seminar as long as the lawyer does not use the seminar to highlight his or her professional experience or solicit business. The lawyer may make a general statement of information regarding his or her employment ability and how to get a hold of him. The lawyer may not suggest that an attendee should seek the lawyer's advice although the lawyer may suggest that the attendee seek counsel of the attendee's choice. The lawyer may send letters about the seminar, but they must be in compliance with the state's restrictions on personal contacts to perspective clients. A 1992 opinion issued in Texas (Opinion 489) held that a law firm may develop, sponsor and conduct a seminar targeted at a particular segment of the public if the seminar is educational and not designed for publicity or profit, the seminar is open to both lawyers and non-lawyers, if no advice is given concerning specific problems and if advertising restrictions are complied with.. Wisconsin Opinion E-94-4 held that a lawyer may accept as a client someone who chose to consult the lawyer after attending the lawyers presentation at a seminar, that opinion resulting in the withdrawal of a prior contrary opinion.

Thus we find a potpourri of rules and restrictions governing seminar participation by lawyers. We find that Opinion 75-11 is out of step with the approach of other states as well as general practices in the profession and, accordingly, it is withdrawn. We conclude that a lawyer may ethically participate in public seminars sponsored by charitable organizations or for-profit entities where the purpose is both to educate the public and generate business for the sponsoring organization and the lawyer as long as the following criteria are followed:

1. The lawyer may not pay the organization or furnish anything of value in exchange for the lawyer's participation, this in accordance with DR 2-103(A).

2. The lawyer may not render individual legal advice to attendees during or immediately after the seminar.

3. The lawyer may not advise attendees that they need legal advice and then agree to furnish it.

4. In connection with the relationship with the sponsor, the lawyer must be especially mindful of the dictates of DR 5-101 (A) and DR 5-107.

A lawyer must also be mindful of DR 2-104 both in promoting the seminar and during its course. We believe that this disciplinary rule is not violated by the seminar participation itself because the contact is initiated by the persons attending the program.

It should also be pointed out that the prohibition in Opinion 75-11 of designating the lawyer as a specialist is no longer tenable because it is contrary to the United States Supreme Court's holding in *Peel v. Illinois Attorney Registration and Disciplinary Commission*, 496 U.S. 91 (1990), which prevents states from prohibiting lawyers from advertising their certifications from bona fide private organizations.

With respect to solicitation, we find Opinion 81-10 to be in accordance with DR 2-104. This Committee has no authority to after a disciplinary rule.

#### CONCLUSION

1. A lawyer does not violate the Code of Professional Responsibility by participating in public seminars sponsored by charitable organizations or for-profit entities where the purpose is to both educate the public and generate business for the sponsor and the lawyer as long as the criteria set forth above are followed.

2. A lawyer violates the Code of Professional Responsibility by socially entertaining non-lawyers and directly soliciting them for the purpose of generating clients and client referrals for estate planning services.

October 28, 2004.

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