

Nebraska Ethics Advisory Opinion for Lawyers  
No. 83-2

A LAWYER MAY ETHICALLY ADVERTISE BY MAILING OR DELIVERING LETTERS DIRECTLY TO PROSPECTIVE CLIENTS; PROVIDED, PERSONAL CONTACT IS NOT INVOLVED, THE COMMUNICATION IS NOT FALSE OR MISLEADING, AND ON THE FRONT OF EACH ENVELOPE IN WHICH IT IS MAILED OR DELIVERED (OR ON THE FRONT OF EACH POSTCARD, IF PRINTED ON A POSTCARD) ARE PLACED THE WORDS: "THIS IS AN ADVERTISEMENT."

QUESTION PRESENTED

A multistate law firm proposes to advertise by mailing the following letter to lay persons at particular institutions of higher education in Nebraska:

Dear \_\_\_\_\_:

From time to time you may experience some difficulty in your efforts to collect outstanding loans made to former students of your institution. This may be particularly true where the debtor is out-of-state or out of the territory where you have established legal representation. Many of the state student loan authorities, as well as the United States Department of Education, have already begun to use nationwide collection services as a means for collecting on outstanding loans and accounts. You may also have considered using private collection agencies to help you collect on these loans and this is the reason for this letter.

While we are not a collection agency as such, our firm has experienced in debt collection work. Moreover, we have offices located throughout the United States. Our experience and capabilities extend from

letter-writing and telephone calls to the institution of legal action and post-judgment collection activity in the local courts where the debtor may reside. Moreover, we are willing and able to develop a program that fits the individual needs of the client and our fee arrangement is flexible.

Should your institution have need for collection services now or in the future, we would be happy to discuss our capabilities with you.

## DISCUSSION

Until amendments recently were adopted, the Code of Professional Responsibility adopted by the Supreme Court of Nebraska (Code), confined lawyer advertising to the use of the print media, radio and television. Now, DR 2-101(B) provides:

(B) Subject to the requirements of DR 2-101 (A) and DR 9-104 (B), a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, radio or television, or through written communication not involving personal contact. A copy of recording or an advertisement or written communication shall be kept for one year after its dissemination along with a record of when and where it was used. (Emphasis supplied).

And DR 2-101 (F) provides:

(F) On the front of each envelope in which an advertisement of a lawyer is mailed or delivered or on the front of each postcard, if the advertisement is printed on a postcard, shall be placed the words: "This is an advertisement". These words shall be printed in type size at least as large as the print of the address and shall be located in a

conspicuous place on the envelope or card.

And, DR 2-104 (B) provides:

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

(1) The lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer;

(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.

Lastly, DR 2-101(A) provides, in part:

(A) A lawyer shall not make a false or misleading communication about the lawyer's services. A communication is false and misleading if it:

\* \* \*

(2) Is likely to create an unjustified expectation about results the lawyer can achieve .

#### CONCLUSION

In the opinion of the Committee a direct mailing of a letter similar to the one set out above is permitted by the above quoted amendments to the Code, provided the lawyer or law firm complies with the requirements of DR 2-101(F), and the communication is neither false nor misleading and is not likely to create an unjustified expectation about results the lawyer or law firm can

achieve.

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