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Re: Ethics Opinion 88-3

I write this to you on behalf of the Ethics Committee in response to your recent inquiry to it. You have inquired as to the ethicacy of the following proposed practice:

An attorney will place public information advertisements in area newspapers advising and informing the public that an informational seminar will be conducted at a stated hour and place within the city. The topic of the informational seminar shall be specific, for example, it might be involving claimants' various rights under the worker's compensation laws in South Dakota. Each seminar would be devoted to one or more topics, and under the example above listed, it might address coverage, benefits and/or factual problems or related liability including insurer bad faith, products liability and intentional acts of the employer.

The seminar would include the opportunity of presenting specific factual information by the participant, and the attorney conducting the seminar may accept requests for representation.

The frequency of the public discussions would be adjusted according to the need as determined by you. At the discussion, published material shall be distributed which would summarize the area of practice or the topic in discussion, which information may be informative in character similar to that provided by the South Dakota Bar pamphlet. Published materials provided at the seminar prepared by the sponsoring law office would not hold the attorney nor office out as a specialist, but would include the law office or

attorney's name, professional address and telephone number.

The majority of the committee feels that these seminars and requests for representation that arise therefrom would violate Model Rule 7.3, which prohibits the possibility of undue influence, intimidation and overreaching in any solicitation by an attorney of prospective clients.

As we have indicated in a recent opinion, the legal profession should assist lay persons to recognize legal problems and participate in educational programs concerning legal problems that frequently arise. Attorneys may properly accept invitations to give lectures or present programs before interested groups and upon request, pass out a business card at the program. However, the committee believes that an attorney sponsored seminar in which the sponsoring attorney is the program and responds to specific factual problems by the participant, hands out his own prepared materials and brochure is a different matter. It seems to raise the issue of whether the seminar is motivated by a desire to educate laymen and protect those who do not recognize they have a legal problem, or alternatively is motivated by a desire to secure from that particular group employment and private gain. We encourage seminars provided by entities separate from a law office in which lawyers are asked to participate. The dangers of direct solicitation which appear in your proposal, appear violative of Rule 7.3 as mentioned above.

We would mention that neither the Code of Professional Responsibility nor the Model Rules are very specific about use of seminars as a marketing tool. The committee, however, feels that an attorney sponsored seminar in which the sponsoring attorney is the exclusive program, gives advice to specific problems of individual participants and emphasizes his own personal expertise or reputation is an improper contact with non-clients.

Certainly, there is a fine line drawn between the proposal you suggest and a seminar which is primarily instructional and does not tout the sponsoring attorney's reputation nor does the attorney actually seek out any individual attendees at the meeting to solicit their business. With your proposal, however, Rule 7.3 and the appearances and perceptions of impropriety otherwise existing in such a seminar, require our adoption of this opinion.

Very truly yours,


Robert C. Riter, Jr., Chairman
Ethics Committee