

Group Advertising By Lawyers

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Small and medium-sized law firms with less power and fewer resources than larger law firms may be looking for new ways to reach the public. One way is to enter into joint advertising and promotion programs with their colleagues. Another is to join professional associations which have these programs already in place.

Whatever steps they take, the lawyers must be careful not to run afoul of the many rules which are designed to prevent deception in advertising.

Among these rules are DR 2-102(B)-(D). These rules prohibit any lawyer from practicing under a trade name or a name which is misleading as to the identity of the lawyer using that name; from holding himself out as a partner to other lawyers unless he is in fact a partner; and from representing that he is in practice with lawyers licensed in another jurisdiction unless he makes clear in his letterhead and other listings the limits on his and their right to practice in the jurisdictions involved. (Note, however, that a partnership with offices in several jurisdictions may use the same name in all of them.)

Let us assume that you and your partners have received several solicitations from advertising agencies or from some new lawyer organizations to participate with them in advertising ventures. The possibilities include:

- 1) a "donut" ad - a generic ad which can be personalized for your firm. A "donut" ad can take many forms, including radio and TV spots by a trade association, or other sponsors, with a "hole" for insertion of the names and phone numbers of specific law firms. One form of "donut" ad is an insertion in the yellow pages by a non-profit organization which offers a variety of public services (e.g. the American Association of Retired Parsons, or AARP). The insertion advertises lawyers who agree to give free initial advice and discount their fees for organization members in specific areas of practice.
- 2) an advertisement which refers the public to a central telephone number (such as 1-800-INJURY or 1-800-LAWYERS) that puts callers in touch with a choice of lawyers.
- 3) membership in a nationwide network or consortium of law firms which advertises nationally and also advertises the names of its New York members in ads it places in New York.

Group Advertising vs Lawyer Referral Service

The threshold question in assessing whether participation in a group advertising venture is ethically permitted is whether the venture constitutes group advertising or a lawyer referral service. Participation in group advertising, so long as it complies with the disciplinary rules which pertain to all advertising, is

permitted. Participation in a lawyer referral service, however, is permitted only if the lawyer referral service is in compliance with DR 2-103(D)(3). Lawyers may not participate in a lawyer referral service unless the lawyer referral service is “operated, sponsored or approved by a bar association.”

Whether a particular group venture is “group advertising” or a “lawyer referral service” was the subject of N.Y. State Ethics Op. 597 (1989) and N.Y. State Ethics Op. 678 (1996), as well as opinions of the Nassau County Bar Association and the Association of the Bar of the City of New York. In these opinions, the test is whether the advertising presents clearly the names of the law firms participating, along with their office addresses and any geographical assignment, so that the potential client knows to whom she will be referred. If the advertising does not meet this test, the venture is probably a lawyer referral service and must comply with DR 2-103(D)(3).

Generic (“Donut”) Advertising

A generic “donut” ad is permitted as long as all of the disciplinary rules pertaining to advertising are satisfied. DR 2-101(F) requires that any broadcast advertising must be approved by the attorney before its dissemination. EC 2-10 specifies that an attorney is responsible for the content of his advertising. Even though the generic ad may be created without the attorney’s input, the attorney is still responsible for its contents. The advertisement cannot contain any representations which are false or misleading; information about fees must comply with the disciplinary rules; and any representations regarding the attorney’s practice in specific subject areas must comply with DR 2-105. Of special note when dealing with generic ads is DR 2-101 (K) which provides that all advertising must contain the name, office address and telephone number of the attorney or law firm whose services are advertised.

As long as you include your firm’s name, address and telephone number in the “donut” ad and you insure that there is nothing in the rest of the ad which is false or misleading or which violates any of the other specific disciplinary rules, there is no prohibition in using a generic or “donut” ad.

The Use Of Central Telephone Numbers

The use of an 800 or other central telephone numbers in an ad may create ethical problems. The requirement of DR 2-101(K) that the attorney’s phone number be included does not mean that the phone number must be the same number as the phone number on the attorney’s letterhead. N.Y. State Ethics Op. 597 (1989) noted that the phone number in the ad may be a central number staffed by the advertising service, so long as the ad does not misrepresent the scope of responsibility of the person answering the phone and the answering service does not recommend a particular lawyer. However, unless the advertisement includes the name and address of the lawyer as well as the geographic and practice limitations upon him, the client does not know to whom the call will be referred. An 800 number, for example, that refers clients based upon the geographical area and/or subject matter of the call is more in the nature of a lawyer referral service.

The problems are still present even if the central number is directed to a particular law firm, which then makes the referrals out to the participating attorneys. If the lawyer who will actually provide the services does not supply his or her name or firm name and address in the ad in a meaningful manner, the advertisement is prohibited under DR 2-101(K).

Consortiums And Associations Of Lawyers

DR 2-103(B) and (C) provide that a lawyer cannot give any compensation to any person or organization for referring clients to him; nor may he request that referrals be made other than through permissible advertising or participation in an organization specified in DR 2-103(D). The organizations specified in DR 2-103(D) include a legal aid or public defender office, a military legal assistance office, a lawyer referral service operated, sponsored or approved by a bar association, and a bona fide organization which recommends or furnishes legal services, provided several conditions are met.

If the advertising by the national consortium is simply considered to be group advertising, there should be no ethical bar so long as the conditions of DR 2-101(K) are met. However, if the consortium is considered to be an organization which recommends legal services, it is possible, depending on the structure of the organization, that participation in it will run afoul of DR 2-103(B) and (C).

Before participating in such a program, you should seek an ethics opinion from the State Bar or your local bar association.

You should describe the organization in detail, as well as the nature of the advertising it is offering you.