

Senate Committee Would Felonize Hiring of Runners

BY LAZAR EMANUEL

Lawyers are forbidden both by the Judiciary Law and the Code of Professional Responsibility from employing anyone to solicit legal business or any agreement for the performance of legal services. Judiciary Law §482 states:

It shall be unlawful for an attorney to employ any person for the purpose of soliciting or aiding, assisting or abetting in the solicitation of legal business or the procurement through solicitation either directly or indirectly of a retainer, written or oral, or of any agreement authorizing the attorney to perform or render legal services.

DR 2-103(A)(1) prevents a lawyer from soliciting employment from a prospective client either in person or by telephone. DR 1-102(A)(2) instructs a lawyer not to circumvent a Disciplinary Rule through the actions of another. In other words, what a lawyer may not do personally in soliciting business, he may not do through the employment of others.

Under present law, violation of Section 482 by a lawyer constitutes a misdemeanor. Judiciary Law §485. Further, any in- person solicitation on behalf of a lawyer by a person employed by the lawyer to solicit clients constitutes a misdemeanor by that person. Judiciary Law, Sections 479, 481, 485.

The State Senate's Judiciary Committee has now recommended an amendment to the Judiciary Law which would convert the penalty for violation of the anti-solicitation rules from a misdemeanor to a felony after the second offense. The statute of limitations for prosecuting violations would be extended from two years to five. The amendment was introduced by Senator Dean G. Skelos, a Republican from Nassau County and is co-sponsored by thirteen other senators.

The distinction between a misdemeanor violation and a felony is important to lawyers. Under Judiciary Law § 486-a, whenever a lawyer is convicted of a felony, it's the duty of the clerk who records the conviction to ascertain the place and date of the lawyer's admission to practice and to transmit a certified copy of the judgment of conviction to the Appellate Division in the judicial department in which the lawyer was admitted within five days of the conviction.

Notice to the Appellate Division of a felony conviction automatically brings into play the provisions of Judiciary Law §90(4)(a).

Any person being an attorney and counselor-at-law who shall be convicted of a felony...shall, upon such conviction, cease to be an attorney or counselor-at-law, or to be competent to practice law as such.