



Committee on Professional Ethics

OPINION #89-5

Topic: 3rd Party Direct Mail Solicitation

Digest: Direct Mail Solicitation by Non-Lawyers is prohibited

Code: DR 2-101; 2-103(A); 2-103(B); 2-103(C); 2-103(D); Judiciary Law §479

QUESTION

1. MAY A LAW FIRM WHICH ENGAGES IN A SUBSTANTIAL AMOUNT OF ESTATE PLANNING PERMIT A LOCAL INSURANCE FIRM TO SUGGEST TO THE INSURANCE FIRM'S CLIENTS, BY A DIRECT MAIL SOLICITATION, THE AVAILABILITY OF THAT LAW FIRM?
2. MAY SUCH A DIRECT MAILING INCLUDE A PAMPHLET ON THE NECESSITY FOR HAVING A WILL, SAID PAMPHLET BEARING THE NAME OF THE LAW FIRM?

OPINION

NYSBA Professional Ethics Committee Opinion #283 cites DR 2-101 which, in pertinent part, condemns authorizing or permitting others to circulate or use, such promotional material on the lawyer's behalf. A clear distinction is drawn between educating members of the public to recognize their legal problems and the promoting of the lawyer for the purpose of enhancing business.

NYSBA Professional Ethics Committee Opinion #565 cites DR 2-103(A) as well as §479 of the Judiciary Law which provides: "It shall be unlawful for any person, his agent, employee or any person acting on his behalf, to solicit or procure through solicitation either directly or indirectly legal business."

NYSBA Professional Ethics Committee Opinion #566 cites DR 2-101(A) and (B), DR 2-103(A), (B), (C) and (D) additionally cites the New York State Court of Appeals case In Re Alessi, 60 NY2d 229 (1983), all of which prohibit third parties from soliciting business for a lawyer.

CONCLUSION

For the reasons hereafter stated, the questions posed are answered in the negative.
