

LEGAL ETHICS OPINION 1290

NONLAWYER EMPLOYEE: USE OF  
FOR SOLICITING PROSPECTIVE  
CLIENTS.

You have asked the Committee to consider the propriety of a lawyer or law firm permitting a nonlawyer employee to contact prospective collection clients, explain the law firm's services and recommend the placement of bad accounts for collection by the firm. For the purposes of this opinion, you have asked the Committee to assume the nonlawyer employee otherwise conforms to the same standards of conduct that would be expected of an attorney and assume that the nonlawyer employee will receive no additional compensation for this service and performs the same in his/her usual course of business.

The appropriate and controlling rules relative to your inquiry are DR:2-103(D), DR:3-104(A)(1), (C) and (E). Disciplinary Rule 2-103(D) provides in part:

A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client, or as a reward for having made a recommendation resulting in his employment by a client, except that he may pay for a public communications permitted by DR:2-101 ....

A lawyer or law firm may employ nonlawyer personnel to perform certain delegated functions under the direct supervision of a licensed attorney which would not constitute unauthorized practice of law and, as such, the lawyer or law firm must exercise a high standard of care to assure compliance by the nonlawyer personnel with the applicable provisions of the Code of Professional Responsibility. Nevertheless, the initial and continuing relationship with the client is the employing attorney's responsibility ( DR:3-104(A), (C)). In addition, a lawyer or law firm shall not permit nonlawyer personnel to communicate with clients or the public, including lawyers outside the firm, without first disclosing their nonlawyer status. (See DR:3-104(E))

Notwithstanding DR:3-104(A), this Committee believes that DR:2-103(A) does not intend for solicitation of employment from a nonlawyer/prospective client, by in-person communication, as one of the permissive delegable activities a nonlawyer/employee may perform under the supervision of his employer/lawyer/supervisor. The Committee would opine that under the present reading of DR:2-103, it would be inconsistent for the rule to permit a nonlawyer to engage in in-person solicitation on behalf of his/her employer/private practitioner as part of his/her regular duties or if it is part of the nonlawyer's job description pursuant to DR:2-103(D). Regardless of compliance with all other provisions of the Code enumerated in DR:2-103 and DR:3-104, and regardless of the frequency of such activity, if the nonlawyer/employee receives compensation in exchange for performing the in-person solicitation, the lawyer or law firm employing such nonlawyer has committed a violation of DR:2-103(D). (See also *Ohralik v. Ohio State Bar Association*, 436 U.S. 447 (1978)) The Committee further cautions that a lawyer may be charged with misconduct by the appropriate disciplinary committee if it is

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Committee Opinion

October 25, 1989

determined that he has circumvented a Disciplinary Rule through the in-person solicitation activities of his nonlawyer employee. (See DR:1-102(A)(2))

Committee Opinion

October 25, 1989

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