

PROFESSIONAL RESPONSIBILITY AND DISCIPLINE

AMENDMENTS TO THE CODE OF PROFESSIONAL RESPONSIBILITY

by The Supreme Court As Of September 29, 1975

Editor's Note: Following is a compilation of the changes which were recently adopted by the Supreme Court. It should be noted that the amendments affect the Code of Professional Responsibility promulgated by the House of Delegates of the American Bar Association on August 12, 1969, effective for ABA members on January 1, 1970, and adopted by order of our Court August 4, 1970. We were reminded by the State Board of Professional Responsibility that other "possible revisions are constantly being studied", and will be published when adopted by the court.

AMENDMENTS TO CODE OF PROFESSIONAL RESPONSIBILITY REGARDING PREPAID LEGAL SERVICES

EC 2-33

As a part of the legal profession's commitment to the principle that high quality legal services should be available to all, attorneys are encouraged to cooperate with qualified legal assistance organizations providing prepaid legal services. Such participation should at all times be in accordance with the basic tenets of the profession: independence, integrity, competence and devotion to the interests of individual clients. An attorney so participating should make certain that his relationship with a qualified legal assistance organization in no way interferes with his independent, professional representation of the interests of the individual client. An attorney should avoid situations in which officials of the organization who are not lawyers attempt to direct attorneys concerning the manner in which legal services are performed for individual members, and should also avoid situations in which considerations of economy are given undue weight in determining the attorneys employed by an organization or the legal services to be performed for the member or beneficiary rather than competence and quality of service. An attorney interested in maintaining the historic traditions of the profession and preserving the function of a lawyer as a trusted and independent advisor to individual members of society should carefully assess such factors when accepting employment by, or otherwise participating in, a particular qualified legal assistance organization, and while so participating should adhere to the highest professional standards of effort and competence.

DR 2-101

- (B) A lawyer shall not publicize himself or anyone associated with him as a lawyer through newspaper or magazine advertisements, radio or television announcements, display advertisements in city or telephone directories, or other means of commercial publicity, nor

shall he authorize or permit others to do so in his behalf. This rule does not prohibit limited and dignified identification of a lawyer as a lawyer as well as by name:

DR 2-103 RECOMMENDATION OF PROFESSIONAL EMPLOYMENT; SUGGESTION OF NEED OF LEGAL SERVICES.

- (A) A lawyer shall not recommend employment, as a private practitioner, of himself or anyone associated with him to a non-lawyer who has not sought his advice regarding employment of a lawyer.
- (B) A lawyer shall not compensate or give anything of value to any person to recommend or secure, or as a reward for having recommended or secured, employment by a client of himself or any lawyer associated with him.
- (C) A lawyer shall not request any person to recommend employment, as a private practitioner, of himself or anyone associated with him.
- (D) A lawyer shall not knowingly assist any person to promote the use of his services or those of any lawyer associated with him.
- (E) A lawyer shall not accept employment when he knows or it is obvious that the person who seeks his services does so as a result of conduct prohibited under this Disciplinary Rule.
- (F) A lawyer shall not accept employment if he knows or it is obvious that it results from unsolicited advice by him or any lawyer associated with him to a layman that he should obtain counsel or take legal action, except:
 - (1) If the advice was to a close friend, relative, former client (if the advice is germane to the former employment), or one reasonably believed to be a client.
 - (2) Without affecting the right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as he does not emphasize his own professional experience or reputation and does not undertake to give individual advice.
 - (3) If success in asserting rights or defenses of his client in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept, but shall not seek, employment from those contacted for the purpose of obtaining their joinder.

DR 2-104 PARTICIPATION WITH ORGANIZATIONS' LEGAL SERVICE ACTIVITIES.

- (A) A lawyer may render legal services to a beneficiary of one of the following which employs, pays for, or recommends him or anyone associated with him to render the services, if he does not permit interference with the exercise of independent professional judgment in behalf of the beneficiary:
- (1) A legal aid office or public defender office operated or sponsored by a duly accredited law school, by a bona fide non-profit community organization, by a governmental agency, or by a bar association.
 - (2) A military legal assistance office.
 - (3) A lawyer referral service operated or sponsored by a bar association.
- (B) A lawyer may knowingly render legal services to a member or beneficiary of any other organization that employs, pays for, or recommends him or anyone associated with him to render services only if the following conditions are satisfied:
- (1) He does not permit interference with the exercise of independent professional judgment in behalf of the member or beneficiary.
 - (2) He recognizes the member or beneficiary for whom the legal services are rendered, and not the organization, as his client.
 - (3) He has not, and he does not know and it is not obvious that anyone associated with him has, except with respect to a legal service arrangement initiated, sponsored, or operated by a bar association:
 - (a) Requested or compensated any person to recommend or secure, or compensated any person for having recommended or secured, the initiation of the organization or its legal service arrangement;
 - (b) Participated in the initiation of the organization or its legal service arrangement, other than by rendering, at the unsolicited request of those wishing to form it, legal services incident to its formation;
 - (c) Recommended, or requested another to recommend or secure, the organization's employment, payment, or recommendation of himself or any lawyer associated with him, when the organization had not sought advice regarding its employment, payment, recommendation of a lawyer, unless the recommendation was for employment by the organization on a full-time salaried basis; or
 - (d) Compensated any person to recommend or secure or for having

recommended or secured the organization's employment, payment, or recommendation of himself or any lawyer associated with him.

- (4) He does not know and it is not obvious that the organization is in violation of any applicable filing or other requirement imposed by court rule, statute or regulation that governs, or is engaged in conduct that involves dishonesty, fraud, deceit, or misrepresentation regarding, its legal service operations.
 - (5) Any member or beneficiary who is entitled to have legal services furnished or paid for by the organization may, if such member or beneficiary so desires, select counsel other than that furnished, selected or approved by the organization for the particular matter involved: and the legal service plan of such organization provides appropriate relief for any member or beneficiary who asserts a claim that representation by counsel furnished, selected or approved would be unethical, improper or inadequate under the circumstances of the matter involved and the plan provides an appropriate procedure for seeking such relief.
- (C) A lawyer shall not render legal services under DR 2-104(B) if he knows or it is obvious that the organization is organized for profit or, irrespective of its legal structure, is in fact operated for profit, and that the employment, payment, or recommendation is pursuant to a regular practice of providing for legal services to others, unless the services are provided for:
- (1) As an employment fringe benefit, directly or through insurance;
 - (2) Through insurance used in connection with an employee organization's arrangement to provide for legal services to its members or their beneficiaries;
 - (3) Incident to a liability insurance policy; or
 - (4) Through an insurance policy under which the insurer does not employ or recommend the lawyer but only pays for the rendering of legal services by any lawyer the member or beneficiary may select.
- (D) A sole proprietor providing for legal services as an employment fringe benefit is deemed an "organization" for purposes of this Rule.
- (E) A lawyer who renders legal services under DR 2-104(B) shall furnish the Board of Professional Responsibility information as it may reasonably require relating to his compliance with this Code in rendering the services.
- (F) A lawyer selected by an organization to render legal services to a member or beneficiary

thereof shall not accept employment from the member or beneficiary to render legal services other than those for which the organization selected him if he knows or it is obvious that it results from unsolicited advice by him or any lawyer associated with him that the member or beneficiary should obtain counsel or take legal action.

- (G) Notwithstanding any Disciplinary Rule, a lawyer who renders legal services, or who has been requested by an organization to be available to render legal services, under DR 2-104(A) or (B) may, without affecting the right to accept employment:
- (1) Authorize, permit, or assist the organization to use a public communication or commercial publicity, which does not identify any lawyer by name, to describe the availability or nature of its legal service activities.
 - (2) Participate in activities conducted or sponsored by the organization and designed to educate laymen to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services, so long as he does not emphasize his own professional experience and does not undertake to give individual advice.
 - (3) Except as to an organization under DR 2-104(C)(4), authorize, permit or assist limited and dignified identification of himself as a lawyer and by name, along with the biographical information permitted under DR 2-102(A)(6), in communications by the organization directed to its members or beneficiaries.
- (H) Notwithstanding any Disciplinary Rule, a lawyer may request referrals from a lawyer referral service operated or sponsored by a bar association, and may pay its fees incident thereto.

DEFINITIONS*

As used in the Disciplinary Rules of the Code of Professional Responsibility:

- (1) "Differing interests" include every interest that will adversely affect either the judgment or the loyalty of a lawyer to a client, whether it be a conflicting, inconsistent, diverse, or other interest.
- (2) "Law firm" includes a professional legal corporation.
- (3) "Person" includes a corporation, an association, a trust, a partnership, and any other organization or legal entity.
- (4) "Professional legal corporation" means a corporation, or an association treated as a corporation, authorized by law to practice law for profit.

- (5) "State" includes the District of Columbia, Puerto Rico, and other federal territories and possessions.
- (6) "Tribunal" includes all courts and all other adjudicatory bodies.
- (7) "Bar association" means a bar association representative of the general bar of the geographical area in which the association exists.

**"Confidence" and "secret" are defined in DR 4-101(A).*