

Alerts

Lawyers May Solicit Lay Organizations to Lecture on Legal Topics, But Limits Apply

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Lawyers for the Profession® Alert

New York State Bar Association, Comm. on Prof'l Ethics, Op. 830 (2009)

Brief Summary

New York lawyers may contact lay organizations to inform them of the lawyer's availability to speak on legal topics without violating state ethics rules. If, however, the communication is made expressly to encourage participants to retain the lawyer or firm, then the communication must comply with the ethics rules on advertising and solicitation.

Complete Summary

The New York State Bar Association Committee on Professional Ethics opined that a lawyer may ethically contact non-lawyer organizations to inform them that the lawyer is available to speak on legal topics. The Committee stated that the ethics rules had evolved to eliminate express barriers to lawyers' participation as speakers on legal topics for non-lawyers. The opinion states that the ethics rules on advertising (Rule 7.1) and solicitation (Rule 7.3) nonetheless would apply if such communications had the express purpose of encouraging participants to retain the lawyer.

The Committee further noted that it lacked jurisdiction to determine whether New York Judiciary Law § 479 prohibited such communications. Section 479 is more strict than the ethical rule on solicitation in that it appears to prohibit both direct and indirect solicitation of legal business. Indeed, there is an open question, the Committee noted, as to whether the solicitation ban in Section 479 is still constitutional under *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).

Significance of Opinion

This opinion helps to define the scope of the rules of professional conduct with respect to advertising and solicitation in the context of legal seminars and programs, taking proper account of the robust modern role of lawyers in legal education for non-lawyers. In addition, the opinion properly recognizes that the constitutionality of the court's archaic law banning all solicitation by lawyers is subject to question.

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