

**BAR ASSOCIATION OF ERIE COUNTY
COMMITTEE ON PROFESSIONAL ETHICS**

Opinion #04-01

Topic: Termination of a portion of
a law firm's business

Digest: Request for
Recommendation for legal
services by another lawyer;
confidentiality and secrets; fee
sharing; withdrawal

Code: DR2-103(A);
DR2-103(C)(3); and (B);
DR2-107;DR2-110; DR4-101(A)

QUESTION

A law firm is terminating their worker's compensation department. They wish to steer their clients to a new law firm. Attached hereto are copies of the proposed letter. The law firm terminating its worker's compensation business proposes to write to each client to advise them that they are terminating their worker's compensation business and suggest to the client that they retain the new law firm. Thereafter the new law firm proposes to write to the same clients advising them that they are available to take over the worker's compensation case of the client.

OPINION

DR 2-103(C) states "A lawyer shall not request a person or organization to recommend or promote the use of the lawyer's services or those of the lawyer's partner or associate, or any other affiliated lawyer as a private practitioner, other than by advertising or publicity not proscribed by DR 2-101, except that: 3. The lawyer may request such a recommendation from another lawyer or an organization performing legal services."

It appears that the letter from the law firm terminating its workers compensation department and recommending the new law firm to its client is consistent with the above referenced rule. Thus, the letter from the law firm terminating its practice is appropriate.

However, the 5th paragraph which states "within the next few days, you will receive correspondence from the new law firm" should be eliminated. The letter should state that the name of the client will not be released to the new law firm until the client so authorizes. We suggest that some simple procedure be made available to the client to accomplish this.

DR4-101(A) states: "Confidence' refers to information protected by the attorney-client privilege under applicable law, and 'secret' refers to other information gained in the professional relationship": that the client has requested to be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

DR4-101(B) states: "Except when permitted under DR 4-101(C), a lawyer shall not knowingly: 1. Reveal a confidence or secret of a client."

In this instance, the act of revealing the names of the clients without the consent of the client is a violation of DR4-101(B), unless the client first authorizes the law firm terminating its workers compensation business to release the name of the client to the new firm. Thereafter, and upon the consent of the client, the letter from the firm which proposes to take the workers compensation business would be appropriate to forward to the client.

Both law firms should be aware of the rules relating to sharing fees. See, DR2-107.

In the event the client does not wish the law firm which is terminating their compensation department to withdraw, that law firm must seek authorization from the workers compensation board to withdraw. See, DR2-110.

DR 2-103(A) states: "A lawyer shall not, directly or indirectly, seek professional employment for the lawyer or a partner or associate of the lawyer from a person who has not sought advice regarding employment of the lawyer in violation of any statute or existing court rule in the judicial department in which the lawyer practices.

However, the Court of Appeals *In re von Wiegen*, 63N.Y.2d163 (1984) held that a blanket prohibition on direct mail solicitation of accident victims would violate the First Amendment of the United States Constitution. Also, *In re Alessi* 60N.Y.2d229 (1983) the Court of Appeals held that two attorneys committed professional misconduct by mailing a letter to one thousand (1,000) real estate brokers quoting their legal fees for various residential real estate transactions. Solicitation through third parties raises potential conflicts of interest justifying strict regulation.

Since the law firm which has been recommended to take the worker's compensation client's cases from the law firm which is terminating its worker's compensation department has been introduced by the first law firm, this letter is consistent with Section DR 2-103(A) as interpreted by the New York Court of Appeals. Pursuant to Section DR 2-103(C) a lawyer may recommend another lawyer. There has been no solicitation through a third party since the third party was a lawyer pursuant to Section DR 2-103(C)3.

CONCLUSION

The proposed letter from the firm terminating its workers compensation business is consistent with the Code of Professional Responsibility as amended in the discussion above. The second letter from the firm that will undertake the workers compensation business from the first firm is appropriate after the client's consent to release of their names to the firm which proposes to undertake the workers compensation business.