CLEVELAND BAR ASSOCIATION
PROFESSIONAL ETHICS COMMITTEE
OPINION NO. 89-5

A lawyer may use professional announcement cards that are in dignified form stating new or changed associations or addresses. After departing from a law firm the announcement cards may be sent to potential consumers of legal services including but not limited to present and former clients of both the lawyer and the former law firm as well as to businesses and consumers who are not established clients.

When departing from a law firm a lawyer may send letters to clients of the former law firm to inform the clients of the lawyer's departure, and that the client has the right to decide who will complete or continue matters. The lawyer or the former firm is required to give due notice to those clients of the former firm for whose active, open and pending matters the lawyer was directly responsible.

This opinion makes no analysis of the legal issues involved in a departing lawyer's act of sending announcement cards and letters to former firm's clients. These issues involve civil and criminal legal rights and duties which are outside the scope of this ethics opinion.

STATEMENT OF THE FACTS

Lawyer departed from former law firm in order to establish lawyer's own office. He wishes to send communications to the former law firm's clients informing them of his departure and advising them of their right to have the lawyer continue to represent them.
QUESTIONS INVOLVED

1. Whether a lawyer may ethically send professional announcement cards to the former law firm's clients?

2. Whether a lawyer may ethically send a letter to clients of the former law firm for whose active, open and pending matters the lawyer was directly responsible to inform the clients of the lawyer's departure and the clients' right to decide who will complete or continue their matters?

REASONING AND AUTHORITY FOR THE CONCLUSIONS

Since Bates v. State Bar of Arizona, 433 U.S. 350 (1977), in which the United States Supreme Court held that the First Amendment protected the right of a lawyer to advertise, the rules which affect advertising have become liberalized. In Zauderer v. The Office of Disciplinary Counsel, 105 S.Ct. 2265 (1985), a case which originated in Ohio, the United States Supreme Court held that an attorney could ethically advertise to a group of women who had a potential claim in the Dalkon Shield Intrauterine Device litigation. The Court reasoned that the lawyer's right to advertise was protected by the First Amendment so long as those advertisements were not false or misleading.

In Shapero v. Kentucky Bar Association, 486 U.S. 466 (1988), the United States Supreme Court held that under the First and Fourteenth Amendments a state may not categorically prohibit lawyers from mailing truthful letters to people known to have a need for specific legal services. However, an attorney is not permitted to solicit potential
clients in person for pecuniary gain. Ohralik v. Ohio State Bar


Disciplinary Rule, 2-102(A)(2) provides

(A) A lawyer or law firm may use or participate in the use of professional cards, professional announcement cards, office signs, letterhead, or similar professional notices or devices that are in dignified form and comply with the following:

... 

(2) A brief professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional offices of a lawyer or law firm. It shall not state the nature of the practice except as permitted under DR 2-105.

A prior version of this rule restricted the sending of professional announcement cards to "lawyers, clients, former clients, personal friends and relatives." In In Re R.M.J., 455 U.S. 191 (1982), the United States Supreme Court held that the restriction in the prior version of the rule was too narrow and violated the First Amendment. The present rule no longer restricts the sending of professional announcement cards to certain individuals.

A lawyer is required by Disciplinary Rule 2-101 (A) and (B) not to use false, fraudulent, misleading or deceptive statements or claims when communicating with "potential consumers of legal services."

Disciplinary Rule 2-101 (C) defines a false or misleading communication:

(C) A communication is false or misleading if it:

(1) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered
as a whole not materially misleading;

(2) Is likely to create an unjustified expectation about results the lawyer can achieve or states or implies that the lawyer can achieve results by means that violate the Code of Professional Responsibility or other law; or

(3) Is subjectively self-laudatory, or compares a lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

A lawyer is required by Disciplinary Rule 2-103 (A) not to recommend himself or an associate for employment except as provided in Disciplinary Rule 2-101, governing publicity. A lawyer shall not hold himself out publicly as a specialist or as limiting his practice except in compliance with Disciplinary Rule 2-105.

In Suffolk County Bar Association, Opinion, 87-2 the Suffolk bar opined that under Disciplinary Rule 2-101, 2-102, 2-103 and 2-105 a lawyer may send announcements to former law firm clients regardless of whether the lawyer had a previous relationship with those clients provided that the following conditions are satisfied;

(1) The announcement is not false or misleading; does not reflect adversely on the legal profession as a whole, does not contain puffery or self-laudation, and does not include claims regarding the quality of the lawyer's legal services or claims that cannot be verified or measured; and

(2) The lawyer does not hold himself out as a specialist in any particular area of law unless certified by competent authority.

In Supreme Court of Ohio, Opinion No. 87-034 (December 18, 1987) the Board of Commissioners on Grievances and Discipline opined that a lawyer may ethically send announcement cards stating new or changed associations to businesses such as banks, savings and loans, and
realtors which are not established clients. The announcement may state that the lawyer's or firm's practice consists largely of or is limited to a field or fields of law. The announcement should not claim or imply special competence or experience in the field of law.

In ABA, Informal Opinion No. 1457, (April 29, 1980), further considered in ABA, Informal Opinion No. 1466 (February 12, 1981), the ABA opined that a lawyer may ethically send a letter to clients of the former law firm for whose active, open and pending matters the lawyer was directly responsible before his departure provided that:

(A) The letter is sent soon after the departure;

(B) The letter does not urge the client to sever relationship with the lawyer's former firm and does not recommend the lawyer's employment;

(C) The letter makes clear that the client has the right to decide who will complete or continue the matters;

(D) The letter is brief, dignified, and not disparaging of the lawyer's former firm.

Disciplinary Rule 2-110 (A) (2) governs withdrawal from employment and provides as follows:

(A) In general.

(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

Only the client has the exclusive right to choose whether to continue to use the firm as counsel or transfer business to the

CONCLUSIONS

1. A lawyer may ethically send professional announcement cards in dignified form to the former law firm's clients and to other potential consumers of legal services.

2. A lawyer may ethically send a letter to clients of the former law firm to inform the clients of the lawyer's departure and that the client has the right to decide who will complete or continue the matters. The lawyer or law firm is required to give due notice to those clients of the former firm for whose active open and pending matters the lawyer was directly responsible.

CAVEAT

This opinion makes no analysis of the legal issues involved in a departing lawyer's act of sending announcement cards and letters to former firm's clients. These legal issues include, but are not limited to:

(1) fiduciary duties;
(2) confidentiality and privilege;
(3) trade secrets;
(4) unfair competition; and,
(5) breach of contract.

These issues involve civil and criminal legal rights and duties of a departing lawyer which are outside the scope of this ethics opinion.