

FORMAL OPINION NO 2005-112

[REVISED 2021]

Information about Legal Services: Distribution of Brochure by Welcoming Program and Participation in Health Club Services Program

Facts:

Law Firm is marketing its services in part through distribution of its brochure by a welcoming program and in part through participation in a health club services program.

The welcoming program distributes materials from businesses to executives and professionals who are new to the community. The materials distributed include information about the community, a business card folder containing cards of sponsors, and a bound book containing profiles and illustrations of civic, professional, and business leaders in the community. Although Law Firm would be designated as a sponsor of the welcoming program, Law Firm would not have its business card included in the business card folder for distribution with those of other sponsors. Instead, Law Firm's participation would be limited to a one-page profile in the bound book, which includes profiles of healthcare professionals, banks, real estate companies, restaurants, hotels, and the like. Law Firm would be the only lawyer-participant in the program and would pay a fee to participate. The welcoming program is not operated primarily for the purpose of procuring legal work or other financial benefits for Law Firm.

As part of its membership services, a health club provides its members certain benefits from lawyers such as free initial consultations, free consultations regarding wills, and discounted fees on certain types of legal work. The health club views these services not only as beneficial to its existing members but also as an inducement to secure future members. Law Firm's participation in the health club's services program would be through being included on a list of merchants and professionals providing similar introductory discounts or through the use of a coupon entitling the recipient to one of the above-mentioned services at no cost. The health club

would receive no financial reward for providing Law Firm's name to its members.

Questions:

1. May Law Firm participate in the welcoming program?
2. May Law Firm participate as a member of the health club services program through which legal services are advertised?

Conclusions:

1. Yes.
2. Yes, qualified

Discussion:

1. *Welcoming Program.*

Oregon RPC 7.2(a) provides that “[s]ubject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.” Here, the materials provided under the welcoming program are printed, and therefore allowed under Oregon RPC 7.2(a).

Oregon RPC 7.1 provides:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

As long as the Law Firm profile included in the welcoming program is truthful and not misleading, Law Firm's participation in the welcoming program would not violate Oregon RPC 7.1.

Oregon RPC 7.3 applies when the lawyer seeks to solicit professional employment. Here, as the welcoming program is not operated for

the purposes of procuring legal work or other financial benefits, the requirements of Oregon RPC 7.3 are not applicable.

Assuming that the welcoming program's role is merely publicizing the availability of the legal services, as opposed to recommending the Law Firm, Oregon RPC 7.2(b) would also permit such activity.

2. *Health Club Services.*

The health club services actively recommend Law Firm for its services. Oregon RPC 7.2 governs lawyer recommendations, and provides, in pertinent part:

- (b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may
 - (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
 - (2) pay the usual charges of a legal service plan or a lawyer referral service;
 - (3) pay for a law practice in accordance with Rule 1.17; and
 - (4) give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

Under the health club services program, there is no fee or other compensation paid by Law Firm to the club for the advertising service. However, by the use of Law Firm's name, by the existence of Law Firm's prestige and goodwill in the community, by the fact of Law Firm's participation in the plan, and by Law Firm's offer of discounted legal services to club members, Law Firm is effectively providing the health club with a potentially valuable endorsement and with an exclusive benefit that the club may pass on to its members. The health club is placed in the position of being a third-party beneficiary when new members are persuaded to join due to the benefits offered by the availability of promotional discounts. A quantification of the value of the benefit to the club and a comparison of advertising costs to that benefit as measured against a standard of reasonableness should be analyzed. The value bestowed on the club by Law Firm must not exceed the reasonable cost of the advertising.

If the value does not exceed the reasonable cost of the advertising, Oregon RPC 7.2 is not violated.

Approved by Board of Governors, February 2021.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 2.4 to § 2.4-1(a) (advertising), § 2.4-1(d) (restriction aimed at media advertising), § 2.4-2 (regulation of time, place, and manner of advertising), § 2.4-4 (marketing and public relations), § 2.4-5(a) to § 2.4-5(c) (Idaho, Washington, and Utah laws on advertising), § 2.6-4 (limitations on obtaining employment through third-party recommendations), § 2.6-5 (lawyer-referral services) (OSB Legal Pubs 2015); ABA Model RPC 7.1–7.2; and ABA Model RPC 8.4(c).