

Digest of Ethics Advisory Panel Opinion #87-2
Request #6
Issued November 3, 1987

An attorney seeks panel advice concerning the propriety of an advertisement he wishes to run aimed at identifying individuals who have had experiences similar to those of his three, unrelated clients. The attorney also discloses that he is Rhode Island counsel for a related civil action being brought in Federal Court which seeks certification as a class action.

The advertisement in question briefly solicits information, and does not suggest that legal actions have been taken or that legal representation is available. The attorney indicates that he hopes to identify individuals who have had experiences similar to those of his clients in order to establish a pattern to the events and circumstances. The attorney believes that establishing the existence of such a pattern would be useful either in defending his present clients, bringing related civil charges on their behalves or in connection with the potential class action in federal court.

Ethics Advisory Panel advice is protective in nature. There is no requirement that an attorney abide by a Panel opinion, but if he or she does, he or she is fully protected from any charge of impropriety.

With respect to the matter at hand, the Panel takes the position that the advertisement is proper. The Panel relies on Code of Professional Responsibility DR 2-104(5). This section clearly recognizes that contacting other potential members of a class in connection with class action litigation to obtain evidence and information is proper and necessary. The Panel points out that this section also permits an attorney to accept employment from those contacted, as long as such employment is not sought.

The Panel, therefore, advises the attorney that it is permissible for him to contact potential members of a class by advertisement to assist in the defense of his clients. The Panel indicates that no violation of the Code of Professional Responsibility will occur provided the attorney does not actively seek legal employment from those individuals who respond to the advertisement.