

OPINION 519

March 1997

Question

When a law firm, which represents a foreign government, administers and partially funds a legal aid office established by the foreign government to provide legal services for its nationals residing in Texas, may the law firm or the legal aid office initiate contacts with these foreign nationals to encourage them to utilize the legal services of the law firm or the legal aid office? May the legal aid office handle a case that the law firm could not handle because of a conflict of interest?

Facts

A law firm in Texas is retained by a foreign government to serve as legal counsel to the foreign government. The foreign government sponsors a legal aid office to provide assistance to its nationals in connection with commercial, civil rights, tort, and matrimonial law matters. The law firm agrees with the foreign government to administer the legal aid office and provide some of the funding for the office. The remainder of the legal aid office's funding comes from the foreign government. The legal aid office is staffed partly with lawyers employed by the office and partly by partners and associated of the law firm who volunteer their time to assist in the work of the office. The legal aid office, which has a name indicating its relationship to the foreign country but not indicating a relationship to the law firm, functions as a non-profit entity and does not receive fees from clients. The relationship between the law firm on the one hand and the foreign government and the legal aid office on the other hand can be terminated at any time by any of the parties involved.

Lawyers with the law firm and the legal aid office propose to contact foreign nationals residing in Texas to encourage them to obtain legal services from the legal aid office or from the law firm.

Discussion

All solicitations by Texas attorneys directed at foreign nationals with respect to legal services must comply with all relevant provisions of [DRs 7.01](#) through [7.07](#) concerning the provision of information about legal services (all citations to DRs are to the Texas Disciplinary Rules of Professional Conduct as currently in effect). Among the applicable requirements of these rules are requirements that solicitations for legal services, regardless of whether in-person, by telephone, or in writing, not involve coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment and not include false, fraudulent, misleading, deceptive, or unfair statements or claims (see [DR 7.03\(a\)\(1\)](#) and (3) and [DR 7.05\(a\)\(1\)](#) and (3)). Also, under [DR 7.03\(b\)](#), a law firm or lawyer could not offer or provide services or anything else of value to a non-lawyer (in this case, the foreign government) in exchange for the non-lawyer's referring clients to the law firm or lawyer.

Under [DR 7.03\(a\)](#) uninvited in-person or telephone contacts by a lawyer concerning legal services relating to a matter arising out of a particular occurrence or event, or series of occurrences or events, generally are prohibited where a significant motive is the lawyer's pecuniary gain and the lawyer does not have certain types of past relationships with the person contacted. However, [DR 7.03\(a\)](#) provides that this limitation on in-person and telephone solicitation does not apply (if all other requirements are complied with) in the case of certain contacts on behalf of a qualified non-profit organization:

Notwithstanding the provisions of this paragraph, a lawyer for a qualified nonprofit organization may communicate with the organization's members for the purpose of

educating the members to understand the law, to recognize legal problems, to make intelligent selection of counsel, or to use legal services.

A foreign government acting with respect to its nationals residing in Texas functions essentially like a private non-profit organization created to benefit a class of person. In fact, foreign nationals may be related more closely to the government of which they are citizens than are most intended beneficiaries of private non-profit organizations. Accordingly, the committee believes that, for the purposes of the above quoted exception to the general restrictions of [DR 7.03\(a\)](#) against solicitation in connection with specific occurrences or events, a foreign government should be treated as a "qualified non-profit organization." In the circumstances described, the legal aid office would also be a qualified non-profit organization for purposes of [DR 7.03\(a\)](#). Thus, even if lawyers with the law firm, acting either as lawyers for the foreign government or as volunteers for the legal aid office, contact foreign nationals with respect to specific events or occurrences that may make legal services desirable, such contact would not be prohibited solicitation if such communications are carried out "for the purpose" of benefiting the foreign nationals contacted and all other requirements are met. However, the committee believes that a contact that results in fee-paying legal work for the law firm would not be within this exception since one significant purpose of such a contact by the law firm's lawyers would inevitable be to generate legal business for the law firm rather than simply to meet the needs of the foreign nationals for information on legal services.

Because of the law firm's role in administering and controlling the legal aid office, the legal aid office and its lawyers would, in the view of the committee, be "associate with" the law firm for purposes of applying the conflict interest rules set forth in [DRs 1.06](#), [1.07](#), and [1.09](#) (see [DRs 1.06\(f\)](#), [1.07\(e\)](#), and [1.09\(b\)](#)). Accordingly, a matter for which the law firm and its lawyers would have a conflict of interest that would preclude representation could not be handled by the legal aid office. In such circumstances, it would be permissible for the legal aid office to refer the matter to a lawyer or law firm not subject to the conflict.

Conclusion

A law firm and its lawyers may cooperate with a foreign government to administer and support a legal aid office to provide legal services for the foreign government nationals who are present in Texas. In connection with this work, the law firm may communicate with, and cooperate with the foreign government and the legal aid office in communicating with, foreign nationals concerning legal services. However, in the case of in-person and telephone communications directed to persons who have no prior relationship to the lawyers involved and relating to specific occurrences and events, the law firm and its lawyers may not accept employment on a fee-paying basis arising from such communications. Because of the relationship between the legal aid office and the law firm, the legal aid office could not handle matters that the law firm could handle because of a conflict of interest.