

ADVISORY ETHICS OPINION 94-06

SYNOPSIS:

An attorney may not contact a prospective client by telephone to solicit his real estate business simply because the prospective client has advertised his property for sale as an owner/seller in the mass-media publication.

FACTS:

A seller of real estate has advertised his property for sale in a mass-media publication. Attorney A wishes to telephone the seller as a prospective client for real estate services. He asks our opinion as to whether the advertisement by the seller constitutes an "initial communication" from the seller to the attorney, releasing the attorney from the prohibitions of DR 2-104 which pertain to lawyer generated "initial communications". We do not believe that the seller's advertisement constitutes an initial communication.

OPINION:

DR 2-104 prohibits a lawyer from initiating a telephonic communication with a prospective client with the purpose of obtaining professional employment except under circumstances which are not applicable on these facts.

Nothing in Attorney A's request indicates that the seller requested any information with respect to obtaining attorney's services. The seller merely advertised the property for sale and invited inquires and telephone calls regarding the property. Under these circumstances, we conclude that no initial communication has been generated by the seller.

Attorney A is prohibited from contacting the seller by telephone. We do note, however, that Attorney A is not prohibited from contacting the seller by letter under the terms of DR 2-104(3).