

ETHICS OPINION

RO-90-09

QUESTION:

The attorney has presented a firm brochure for review and approval. A copy of the brochure is attached hereto as Exhibit "A".

ANSWER:

The brochure presented is permissible pursuant to the provisions of Temporary Disciplinary Rules 2-101, 2-102, 2-103, and 2-104 which state as follows:

"DR 2-101 \* \* \*

A lawyer shall not make or cause to be made a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

- (A) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.
- (B) 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 rules of professional conduct or other law; or
- (C) Compares the quality of the lawyer's services with the quality of other lawyer's services, except as provided in Temporary DR 2-104.
- (D) Communicates the certification of the lawyer by a certifying organization except as provided in Temporary DR 2-112."

Temporary Disciplinary Rule 2-102 provides:

"DR 2-102 \* \* \*

Any lawyer who advertises concerning legal services shall comply with the following:

- (A) Subject to the requirements of Temporary DR 2-101, a lawyer may advertise services

through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor displays, radio, television, or written communication not involving solicitation as defined in Temporary DR 2-103.

- (B) A true copy or recording of any such advertisement shall be delivered or mailed to the Office of the General Counsel of the Alabama State Bar at its then current headquarters within three (3) days after the date on which any such advertisement is first disseminated; the contemplated duration thereof and the identity of the publisher or broadcaster of such advertisement, either within the advertisement or by separate communication accompanying said advertisement, shall be stated. Also, a copy or recording of any such advertisement shall be kept by the lawyer responsible for its content as provided hereinafter by Temporary DR 2-102(D), for six (6) years after its last dissemination.
- (C) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of any advertisement or written communication permitted by this rule and may pay the usual charges of a not-for-profit lawyer referral service.
- (D) Any communication made pursuant to this rule shall include the name of at least one lawyer responsible for its content.
- (E) No communication concerning a lawyer's services shall be published or broadcast unless it contains in legible and/or audible language the following: 'No representation is made about the quality of the legal services to be performed or the expertise of the lawyer performing such services.' (Amended effective January 6, 1986)
- (F) If fees are stated in the advertisement, the lawyer and/or law firm advertising must perform the advertised services at the advertised fee, and the failure of the lawyer and/or law firm advertising to perform an advertised service at the advertised fee shall be prima facie evidence of misleading advertising and deceptive practices. The lawyer and/or law firm advertising shall be bound to perform the advertised services for the advertised fee and expenses for a period of not less than sixty (60) days following the date of the last publication or broadcast."

Temporary Disciplinary Rule 2-103 provides:

"DR 2-103 \* \* \*

A lawyer may not solicit nor cause to be solicited on his behalf professional employment from a prospective client, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term 'solicit' includes contact in person or by telephone."

Temporary Disciplinary Rule 2-104 provides:

"DR 2-104 \* \* \*

A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state or imply that the lawyer is a specialist except as follows:

- (A) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation 'patent attorney' or a substantially similar designation.
- (B) A lawyer engaged in admiralty practice may use the designation 'admiralty,' 'proctor in admiralty' or a substantially similar designation."

In addition, the United States Supreme Court decision in Shapero v. The Kentucky State Bar has been accepted by the Disciplinary Commission as allowing advertisements to be directed toward targeted groups or individuals, provided that the advertisements are otherwise in conformity with the Temporary Disciplinary Rules cited hereinabove. Accordingly, the brochure presented, which does appear to be in conformity with those Rules, is permissible.

AWJ/vf

1/18/90

-----  
R [REDACTED] and R [REDACTED]  
Attorneys At Law  
A [REDACTED] City - L [REDACTED]

**DEBT RELIEF**  
**Chapter 13-Fees Set by Court**

C [REDACTED] G. F. [REDACTED] Jr.  
and  
C [REDACTED] G. F. [REDACTED], Sr.

**GENERAL PRACTICE**

Creditor Calls stopped	Repay past due taxes
Repossessions - stopped	Repay past due child support
Foreclosures - stopped	Repay past due Alimony
Garnishments - stopped	Repay student loans

**GET OUT OF DEBT AND**

**KEEP ALL PROPERTY**

Federal law will protect your property and  
STOP all creditor action while a plan of  
repayment is worked out.

Consolidate All Debts And Bills Into One Reduced

Monthly Payment at an Affordable Level.

Plans From 100% - 0%, with 36 - 60 Months to Repay.

-----  
Enclosed are some everyday  
questions and answers  
about Chapter 13  
**13 MAY BE YOUR LUCKY NUMBER**

-----  
The rules of the Alabama State Bar Association require  
any advertisement by a lawyer must contain the following:  
No representation is made about the quality of the legal  
services to be performed or expertise of the lawyer  
performing such services.  
-----

**EXHIBIT**

"A"

.....

**WHAT IS A CHAPTER 13  
AND HOW DOES IT WORK?**

Chapter 13 is that part of the federal bankruptcy laws that permit a person to repay all or a portion of his or her debts under the supervision and protection of the bankruptcy court. Under the Chapter 13, the person filing the case, who is called the Debtor, submits a plan for the repayment of all or a portion of his debts to the court, which must approve the plan for it to become effective. The court prohibits the creditors from attempting to collect their claims from the Debtor and permits the Debtor to make regular payments in the amounts called for in the Debtor's plan to the Chapter 13 Trustee for the period of time specified in the plan. The Chapter 13 Trustee collects the money paid in by the Debtor and disburses it to the creditors as set forth in the Debtor's plan. Upon the completion of the payments called for in the plan, the Debtor is discharged from any liability for the remainder of his debts.

**WHAT IS A CHAPTER 13 PLAN?**

A Chapter 13 is a written plan presented to the Bankruptcy Court by a debtor that states which of the debtors debts should be paid, how much should be paid on each debt, how much of the debtor's earnings or other property should be paid to the Chapter 13 Trustee, how long the payments should continue, which debts should be paid outside of the plan, and certain other technical matters.

**HOW LONG MUST A  
CHAPTER 13 PLAN LAST?**

A Chapter 13 plan must last for three (3) years, unless all debts can be paid off in full before that time. If there is a valid reason it can go up to five (5) years.

**WHAT DEBTS MAY BE PAID UNDER  
A CHAPTER 13 PLAN?**

Any debts whatsoever, whether they are secured or unsecured. Even debts that are nondischargeable, such as debts for alimony, maintenance, or support. Government insured loans and Internal Revenue Service may be paid in a reasonable manner under Chapter 13 plan.

.....

.....

**HOW ARE THE CLAIMS OF  
CREDITORS HANDLED UNDER  
CHAPTER 13?**

Creditors must file their claims with the Bankruptcy Court within 90 days after the first date set for the Meeting of Creditors in order for their claim to be allowed. Unsecured creditors who fail to file claims within that period will be barred from filing a claim, after the completion of the plan their claims will be discharged. When claims have been filed the Debtor is notified and given an opportunity to file objections to any claims that be disputes. When objections have been ruled on the claims approved by the court, the Chapter 13 Trustee will begin making payments to the Creditors. Payments to secured creditors and to special classes of unsecured creditors may begin earlier.

**WHAT IS A  
CHAPTER 13 TRUSTEE?**

A Chapter 13 Trustee is an officer appointed usually by the Bankruptcy Court, to collect payments from the debtor, make payments to creditors in the manner set forth in the Debtor's Chapter 13 plan, and administer the Chapter 13 case until it is closed. The Chapter 13 Trustee is required to perform certain other technical duties in a Chapter 13 case and the Debtor is required to cooperate with the Chapter 13 Trustee.

**HOW MUCH OF A DEBTOR'S INCOME  
MUST BE PAID TO THE TRUSTEE  
UNDER A CHAPTER 13 PLAN?**

Usually all of a Debtor's disposable income for a three-year to a five-year period must be applied toward the making of payments under a Chapter 13 plan. "disposable income" means income which is received by a Debtor that is not reasonably necessary for the maintenance or support of the Debtor and his or her dependents.

**WHEN MUST THE PAYMENTS TO  
THE CHAPTER 13 TRUSTEE  
BEGIN AND HOW OFTEN AND  
BY WHOM MUST THEY BE MADE?**

The Chapter 13 payments must begin within 30 days after a Chapter 13 plan is filed with the Court, or before the First Meeting of Creditors, whichever comes first. The payments to the court may be made weekly, bi-weekly, or monthly depending on the Debtors pay period. The court prefers to issue a wage-withholding order for the payment from the employer, however, in some cases it is allowable for the Debtor to pay direct.

.....

.....

HOW ARE DEBTS THAT HAVE BEEN  
CONSIGNED OR GUARANTEED BY  
SOMEONE ELSE HANDLED?

W  
A  
C  
l  
o  
p  
C  
c  
r  
:

If a consumer debt that has been co-signed or guaranteed by another person is being paid in full under a Chapter 13 plan the creditor will be prohibited from collecting the debt from the other person. However, if the debt is not being paid in full under the plan, the creditor will be permitted to collect the unpaid portion of the debt from the other person. A consumer debt is a non-business debt.

HOW DOES FILING CHAPTER 13  
AFFECT LAWSUITS AND ATTACH-  
MENTS AGAINST THE DEBTOR?

The filing automatically stays (stops) all lawsuits, attachments, garnishments, and other actions by creditors against the debtor and his property for as long as the Chapter 13 case lasts. A few days after the Chapter 13 is filed, notice is mailed to all creditors advising them of the automatic stay. Creditors are not permitted to file lawsuits of attachments against the debtor during the Chapter 13 case and if the debtor is granted a Chapter 13 discharge, they will be prohibited from attempting to collect any discharged debt from the debtor after the case is closed.

HOW DOES FILING CHAPTER 13  
AFFECT FORECLOSURE?

Chapter 13 will stop foreclosure on your home provided the plan is filed with the Court before the house is actually sold.

HOW DOES FILING CHAPTER 13  
AFFECT A TAX LIEN?

Chapter 13 will repay the Internal Revenue for back income tax through the Court and the lien will be removed from your home. It will also stop the interest from accruing any further.

HOW DOES FILING CHAPTER 13  
AFFECT INTEREST?

Filing a Chapter 13 will stop all interest on Internal Revenue for back taxes and on credit cards as well as unsecured claims, but WILL NOT stop interest on Real Estate, Land, Mobile Home, etc. or contract for sale on automobiles. Secured Claims are entitled to interest on home, home mortgage and contract.

.....

-----

**CHAPTER 13 NEED  
NOT BE A STIGMA**

People everywhere get overloaded with debt for many reasons, sickness, unemployment, wage reduction or any unforeseen crisis. Chapter 13 has many advantages over going to a lending institution where they consolidate, required you get a high rate of interest, and in time you are back in the same bind.

Chapter 13 stops interest on Credit Cards and unsecured debts. In many cases you can pay your creditors 100% and feel a sense of pride that you have fully discharged your debts under a plan offered by the United States Government.

-----

-----

R [REDACTED] S and R [REDACTED]

-----

C [REDACTED] G. R [REDACTED], Jr.

( [REDACTED] )

Maintains an office in:

[REDACTED] Building

L [REDACTED], [REDACTED]

PH. [REDACTED]

-----

C [REDACTED] G. R [REDACTED], Sr.

Maintains the A [REDACTED] City

office located at:

108 S. [REDACTED]

(across from [REDACTED])

PH. [REDACTED]

-----

Each case is different and needs a personal conference to further discuss your personal situation.

It is confidential and there is absolutely no charge for your first conference.

-----