

RECD AUG 18 1980

DELAWARE STATE BAR ASSOCIATION

25 Public Building, 11th & King Streets, Wilmington, Delaware 19801 Telephone (302) 658-52

Officers & Executive Committee

President
VICTOR F. BATTAGLIA

Pres. Elect
HAROLD SCHMITTINGER

V.P. At-Large
BRUCE M. STARGATT

V.P. New Castle County
E. NORMAN VEASEY

V.P. Kent County
HENRY J. RIGELY

V.P. Sussex County
JOHN E. MESSICK

Secretary
F. MICHAEL PARKOWSKI

Assn. Secretary
KESTER I. H. CROSSE

Treasurer
SUSAN C. DEL PESCO

Asst. Treasurer
JAMES S. GREEN

Members At-Large
HON. WILLIAM T. QUILLEN
AUBREY B. LANK
D. J. A. DREXLER

Executive Director
CHARLES R. HARRIS

Please address reply to
1105 N. Market Street
Box 366
Wilmington, DE 19899
(302) 429-9200

August 14, 1980

John J. Schmittinger, Esquire
Schmittinger & Rodriguez
414 South State Street
P.O. Box 427
Dover, Delaware 19901

Dear John:

You have asked our Committee whether your participation in the founding of the Delaware Injured Worker's Association would be unethical because injured workers might thereby learn of your identity, interest and expertise in the area of Workmen's Compensation Law and hire you.

I think the answer to your concerns is explicitly stated in DR 2-103 (A) and (D) which read as follows:

"(A) A lawyer shall not, except as authorized in DR 2-101(B), recommend employment as a private practitioner, of himself, his partner or associate to a lay person who has not sought his advice regarding employment of a lawyer.

* * *

"(D) A lawyer or his partner or associate or any other lawyer affiliated with him or his firm may be recommended, employed or paid by, or may cooperate with, 1 of the following offices or organizations that promote the use of his services or those of his partner or associate or any other lawyer affiliated with him or his firm, if there is no interference with the exercise of independent professional judgment in behalf of his client:

(1) A legal aid office or public defender office:

John J. Schmittinger, Esquire
August 14, 1980
Page Two

(a) Operated or sponsored by a duly accredited law school.

(b) Operated or sponsored by a bona fide nonprofit community organization.

(c) Operated or sponsored by a governmental agency.

(d) Operated, sponsored or approved by a bar association.

(2) A military legal assistance office.

(3) A lawyer referral service operated, sponsored or approved by a bar association.

(4) Any bona fide organization that recommends, furnishes or pays for legal services to its members or beneficiaries provided the following conditions are satisfied:

(a) Such organization, including any affiliate, is so organized and operated that no profit is derived by it from the rendition of legal services by lawyers, and that, if the organization is organized for profit, the legal services are not rendered by lawyers employed, directed, supervised or selected by it, except in connection with matters where such organization bears ultimate liability of its member or beneficiary.

(b) Neither the lawyer, nor his partner, nor associate, nor any other lawyer affiliated with him or his firm, nor any non-lawyer, shall have initiated or promoted such organization for the primary purpose of providing financial or other benefit to such lawyer, partner, associate or affiliated lawyer.

(c) Such organization is not operated for the purpose of procuring legal work or financial benefit for any lawyer as a private practitioner outside of the legal services program of the organization.

(d) The member or beneficiary to whom the legal services are furnished, and not such organization, is recognized as the client of the lawyer in the matter.

(e) Any member or beneficiary who is entitled to have legal services furnished or paid for by the organization may, if such member or beneficiary so desires, select counsel other than that furnished, selected or approved by the organization for the particular matter involved; and the legal service plan of such organization provides appropriate relief for any member or beneficiary who asserts a claim that representation by counsel furnished, selected or approved would be unethical, improper or inadequate under the circumstances of the matter involved and the plan provides an appropriate procedure for seeking such relief.

(f) The lawyer does not know or have cause to know that such organization is in violation of applicable laws, rules of court or other legal requirements that govern its legal service operations.

(g) Such organization has filed with the Censor Committee of the Supreme Court, at least annually, a report with respect to its legal service plan, showing its terms, its schedule of benefits, its subscription charges, agreements with counsel and financial results of its legal service activities."

John J. Schmittinger, Esquire
August 14, 1980.
Page Four

In summary, you may participate in the founding of the organization and represent it so long as your purpose, as you advise us, is not directly or indirectly to acquire clients. If clients are recommended to you by the organization, you should be certain that the provisions of DR 2-103(D) are complied with. If clients come to you because of your known and demonstrated interest and competence in Workmen's Compensation Law that seems to me, at least, to be a pretty good reason for clients to select a lawyer.

This area seems fairly well settled so that a formal opinion is not required. However, I am sending this letter to all committee members in case they may have a different view.

Very truly yours,

Rodman Ward, Jr.

RW/sm

cc: Members of the Professional
Ethics Committee

LAW OFFICES
SCHMITTINGER AND RODRIGUEZ

PROFESSIONAL ASSOCIATION
414 SOUTH STATE STREET
P. O. Box 427
DOVER, DELAWARE 19901
TELEPHONE (302) 674-0140
CABLE ADDRESS "SCHMITTROD"

HAROLD SCHMITTINGER
NICHOLAS H. RODRIGUEZ
PAUL H. BOSWELL
JOHN J. SCHMITTINGER
BRUCE C. ENNIS
WILMER C. BETTINGER
LARRY W. FIFER
DOUGLAS B. CATTS
WILLIAM D. FLETCHER, JR.
WILLIAM A. DENMAN
DOUGLAS W. LUNDBLAD
STEVEN E. MOORE
CATHERINE T. HICKEY

WILLIAM J. STOREY
COUNSEL
WILMINGTON OFFICE
414 MARKET TOWER
WILMINGTON, DELAWARE 19801
TELEPHONE (302) 652-3676
REHOBOTH BEACH OFFICE
DELAWARE TRUST BUILDING
REHOBOTH BEACH, DELAWARE 19971
TELEPHONE (302) 645-2846

July 17, 1980

Rodman Ward, Jr., Esquire
Skadden, Arps, Slate, Meagher
& Flom
P. O. Box 366
Wilmington, DE 19899

Dear Rod:

As you know, recently legislation was introduced into the 130th General Assembly that would have completely revamped the Delaware Workmen's Compensation Code to the great detriment of injured workers in this State or at least that is the opinion of many of us practicing before the Industrial Accident Board. Recently a suggestion was made by Dr. Pierre LeRoy that a Delaware Injured Worker's Association be formed. According to Dr. LeRoy several of his patients have asked him if such an organization exists. He suggested to me that interested doctors and lawyers contribute sufficient funds to launch such an organization. I am willing to take the lead and form such an association but before I did so I thought I would check with the Bar Association Ethics Committee to make certain that by placing ads in the newspaper and attempting to organize such an association including the incorporation of it as a non-profit corporation, I will not be violating any of the Disciplinary Rules of the Code of Professional Conduct.

I have already written several attorneys and Dr. Pierre LeRoy has agreed to write several physicians who treat such injured workers to solicit contributions of \$100.00 to defray the initial costs of organizing the association as a non-profit organization.

The purpose of the Delaware Injured Worker's Association will be to affectively organize injured workmen in this State into an effective political action-lobbying group, in the event that Legislation affecting their interests is again introduced in the General Assembly. It is envisioned

Rodman Ward, Jr., Esquire
July 17, 1980
Page Two

at the present time that some attorney, will monitor legislation as it is introduced. Any legislation affecting injured workmen would be analyzed and turned over to the Association for further dissemination to its members. No attorney letterhead would be used in this connection. Instead such analysis will be on Delaware Injured Worker's Association letterhead. As I mentioned, the purpose of the organization will be to disseminate pertinent information concerning proposed Legislation concerning injured worker's rights and also to organize injured workers in this State into an effective political action-lobbying group. It is anticipated that they will lobby on their own behalf, or lobby through their attorney.

I expect that some one of the lawyers who is an initial organizer and contributor of the corporation will probably be elected to its Board of Directors and will fill the role of Attorney to the Corporation. I expect that as Legislation is introduced in the General Assembly he will be asked to analyze that Legislation and report to the Association concerning its effect on the rights of injured workers. His analysis in turn will be disseminated by the corporation to its membership on the corporation's letterhead. It is not anticipated that the identity of the attorney doing this analysis will be disclosed to the general membership directly.

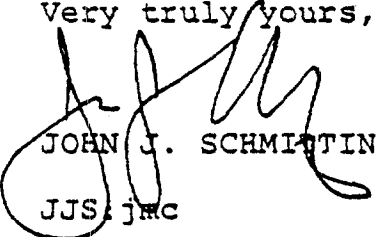
Although I do not believe that any attorney associated with the corporation would engage in solicitation of cases, it seems inevitable to me that certain members of the Association will learn the identity of attorneys who actively practice in the area of workmen's compensation since indeed it will be those attorneys who will be interested in the Association and who will actively participate in its organization and functioning. It also seems inevitable that the identity of those attorneys will probably be learned by at least the injured members of the Association who serve on the Board of Directors. Human nature being what it is, it seems inevitable to me that sooner or later an injured worker will hear of the organization and learn of the identity of one of the interested attorneys through another member of the organization and be directed to that attorney who he will retain to represent him before the Industrial Accident Board. My

Rodman Ward, Jr., Esquire
July 17, 1980
Page Three

question to the Ethics Committee is whether or not my participation or the participation of any other member of the Bar in the formation and operation of such a non-profit corporation violates any of the disciplinary rules of the Code of Professional Conduct.

I will appreciate your earliest response to this matter.

Very truly yours,



JOHN J. SCHMITTINGER

JJS:jmc

4-20