

ADVISORY ETHICS OPINION 2000-01

SYNOPSIS:

A lawyer may join a not-for-profit lawyer referral service operated by a statewide organization which provides information about participating lawyers to its members in response to requests from its members for recommendation of lawyers having experience in the field of law which the organization services.

FACTS:

A Vermont lawyer has inquired whether the Rules of Professional Conduct would prevent him or her joining a referral service operated by an organization with membership in all but one of the state's municipalities. The organization has a Center created solely to provide legal and educational services to its members, and the Center receives requests from its members for recommendation of a lawyer or lawyers having experience in this organization's particular field.

The referral service works as follows:

1. Lawyers wishing to participate in the service complete a questionnaire designed to provide the members with information about their areas of interest and experience, the geographical areas in which they practice, and their billing practices.
2. Members seeking a referred lawyer are furnished copies of the lawyer questionnaires most closely matching their needs concerning subject matter and the Lawyer's geographical area of practice.
3. The Center does not recommend one lawyer over another, but acts merely as a conduit for information about lawyers practicing in the parent organization's field. The member decides whom to hire.
4. The organization advertises the existence of the referral service to its members through occasional mailings.
5. The use of the service is free to the organizations members, and the lawyers seeking to be registered with the Center pay an initial fee of \$100 and thereafter, as contributing members, a fee of \$75.
6. The organization is a non-profit corporation which charges dues to its members.

DISCUSSION:

The pertinent Rules of Professional Conduct are the following:

Rule 7.1 **COMMUNICATIONS CONCERNING A LAWYERS SERVICES.**

A lawyer shall not make 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 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 lawyer's services with other lawyers' services, unless the comparison can be factually sustained.

Rule 7.2 **ADVERTISING.**

- (a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio or television or other electronic media, or through written or recorded communication.
- (b) A copy or recording of an advertisement or communication shall be kept for two years after its last dissemination along with a record of when and where it was used.
- (c) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may
 - (1) pay the reasonable costs of advertisements or communications permitted by this rule;
 - (2) pay the usual charges of a not-for-profit lawyer referral service or legal service organization; and
 - (3) pay for law practice in accordance with Rule 1.17.
- (d) Any communication made pursuant to this rule shall include the name of at least one lawyer responsible for its content.

The comment to Rule 7.1 indicates that statements that may create "unjustified expectation" would ordinarily preclude advertisements about results obtained on behalf of a client, and for that reason, the questionnaire should not contain any information

which might lead the member organization to conclude that the participating lawyer may produce results superior in any way to the effort of other lawyers, and in particular, it may not indicate that the referred lawyer “specializes” in any particular area of law.

Rule 7.2(c)(2) authorizes the payment of the usual charges of a not-for-profit lawyer referral service or legal service organization. The comment emphasizes that a lawyer may participate in such organizations and pay the usual fees charged.

Opinions in other jurisdictions have previously required that the fees for such service provided by a not-for-profit organization must be reasonably related to operational costs. This committee’s advisory Opinion 87-2 held that a lawyer could participate in a for-profit pre-paid legal service plan provided the lawyer exercised professional judgement on behalf of the client, maintained all client confidences, avoided conflicts of interest and practiced competently. The Opinion recited that the participating lawyer had to ensure that the plan did not involve fee sharing.

An ABA formal Opinion 87-355, noted that Disciplinary Rule 2-103(d) (which the Vermont Supreme Court had earlier deleted, was not carried into the Model Rules from which Rule 7.1 and 7.1.2 are derived). The ABA Opinion concluded that the retention by the referral plan’s sponsor of a portion of the lawyer’s fee to cover a profit, as well as administrative costs, did not constitute an improper fee sharing. The request for the Committee’s Advisory Opinion did not indicate whether the fee charged by the organization exceeded its proportionate share of the organizations costs of providing the service, but the fee appears to be minimal.

CONCLUSION:

A lawyer may participate in not-for-profit lawyer referral programs and pay the usual fees charged by such programs. We conclude that the arrangement detailed in the facts recited above does not violate the Rules of Professional Conduct since it appears that the referral service’s function is purely ministerial. Whether the fee for participating in the program is less than the organization’s cost of providing the service does not constitute improper fee sharing.