

ADVISORY ETHICS OPINION 79-11

SYNOPSIS:

- I. PLEAS, a Legal Services Directory plan to be instituted to the Upper Connecticut Valley area of Vermont and New Hampshire appears to be in compliance with the various requirements of the Professional Responsibility Code and specifically with DR 2-103 and EC 2-33.
- II. A legal directory for a legal services delivery plan may list a firm's area of concentration but may not indicate that it is an area of specialization unless the firm or attorney is in fact a specialist as defined in DR 2-105 (A).

QUESTION I:

The Committee has been asked to render an opinion by the Bar Association Board of Managers relative to the propriety of a plan entitled "Program for Legal Education and Services" (PLEAS). PLEAS might be described as a limited, group legal services plan.

FACTS:

PLEAS is a project of the Hanover Consumer Cooperative Society and the Hanover Credit Union and would operate in both New Hampshire and Vermont. PLEAS intends to invite members of the Vermont and New Hampshire Bar to join what they call a "group legal program." The program is designed to make legal services available to the sponsoring corporation members (5,000 people) and the general public. It is PLEAS' hope to encourage lay person contact with lawyers so that they will seek help when needed. The invitation states that PLEAS hopes to allay fears of cost and finding the right lawyer to contact. PLEAS will openly invite attorneys in the so-called Upper Valley Region to become "participating attorneys." PLEAS will publish a directory which will include information about all participating firms.

Lay people will gain membership to PLEAS by payment of \$3.00 to \$5.00 fee. The fees will cover the cost of program administration and education (through newsletters and public meetings) which is a second purpose of PLEAS. For the fee, the member will be entitled annually to two free consultations with participating attorneys. All work after the two free consultations will be billable at regular rates except that families who earn the "lower" budget as determined by the U.S. Bureau of Labor Statistics (currently \$10,900.00 for a family of 4) will pay at a 25% discount. Attorneys will do their own billing and collecting. PLEAS will be responsible for administration, publicity, determination of income eligibility for discounts and education through articles and meetings. PLEAS will, of course, offer no legal advice and will make no representations regarding qualifications of participating attorneys other than the fact that they are admitted to practice in their respective states.

The Directory of Attorneys will include: name and address of firm, areas of concentration, fees, law degrees, number of years in practice, "and other pertinent information."

The PLEAS proposal references a Steering Committee and states:

Any complaint regarding the conduct of this program may be submitted by members or lawyers to a Steering Committee for mediation.

The Committee apparently would be made up of two members from the Hanover Credit Union, two members from the Hanover Consumer Co-Op and two attorneys. The proposal then states that complaints regarding fees, services, or "other aspects of the attorney-client relationship shall be referred to the respective State Bar Associations."

The agreement between PLEAS and participating attorneys is rather straight forward, calling for each participant to give each member two free half-hour consults. One sentence of the agreement provides:

Attorney may refuse to accept a PLEAS member as a client if acceptance of such a client would violate the State Code of Professional Responsibility, result in a direct conflict of interest, or involve the handling of a clearly frivolous matter.

OPINION:

The Controlling Disciplinary Rule would appear to be DR 2-103 (D)(4):

- (D) A lawyer shall not knowingly assist a person or organization that furnishes or pays for legal services to others to promote the use of his services or those of his partner or associate or any other lawyer affiliated with him or his firm except as permitted in DR 2-101 (B). However, this does not prohibit a lawyer or his partner or associate or any other lawyer affiliated with him or his firm from being recommended, employed or paid by, or cooperating with, one 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 on behalf of his client:
- (1) A legal aid office or public defender office:
 - (a) Operated or sponsored by a duly accredited law school.
 - (b) Operated or sponsored by a bona fide non-profit 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...

Then that section then sets forth seven requirements, (a) through (g), which, after inquiry for clarification seem to be met. (1) The organization is non-profit. This should be affirmatively set forth in both the agreement with participating attorneys and the by-law of PLEAS. (2) No lawyer or firm promoted the formation of PLEAS. (3) The organization is not operated for the purpose of procuring legal work or benefit for a private practitioner outside of the legal services program. (4) It is clear that the "members" will be the client and not PLEAS. (5) PLEAS will not furnish or pay for services so the requirements of 2-104 (D)(e) do not need to be met. It should be made clear, however, that any member is free to retain at any time, non-participating counsel should they desire. The fifth requirement also states that members will be afforded appropriate procedures for relief when counsel furnished would present unethical, improper or inadequate representation. This requirement seems to be met by PLEAS ability to offer a choice of many practitioners. (6) At this point in time there appears not to be any activity on the part of PLEAS that violates laws or rules that govern "legal service operations." (7) PLEAS has agreed to file annual reports with the appropriate disciplinary authority. In this state, that would be the Supreme Court and/or the Professional Conduct Board. This Committee understands that the Vermont Supreme Court has not implemented reporting requirements or the schedule for same. We can only advise PLEAS that it must determine the nature of reporting requirements of the Vermont Supreme Court and comply with its rules.

The PLEAS outline reference to a Steering Committee gave rise to a concern of running afoul of EC 2-33 which states:

As a part of the legal profession's commitment to the principle that high quality legal services should be available to all, attorneys are encouraged to cooperate with qualified legal assistance organizations providing prepaid legal services. Such participation should at all times be in accordance with the basic tenets of the profession: independence, integrity competence and devotion to the interests of individual clients. An attorney so participating should make certain that his relationship with a qualified legal assistance organization in no way interferes with his independent, professional representation of the interest of the individual client. An attorney should avoid situations in which officials of the organization who are not lawyers attempt to direct attorneys concerning the manner in which legal services are performed for individual members. . . .

PLEAS has agreed to include a statement that PLEAS will in any event avoid any incidence of directing an attorney's performance of his duties. This statement should be included in both the members and participating attorney agreements.

This Committee has made it clear to PLEAS, and PLEAS has acknowledged, that it must conform to the advertising and publicity requirements of DR 2-101 and DR 2-102. This fact should be affirmatively set forth in the PLEAS-participating attorney agreement.

In summary, the PLEAS plan seems to comply with the requirements of the Professional Responsibility Code. This is only the second legal service delivery plan, and the first of this type, to be presented in this State. As a result, the Committee's discussion covered a wide range of issues. We have tried to be specific in our answers and suggestions. We would suggest that the reviewing authority for the State of Vermont ensure that PLEAS has complied with all of the suggestions set forth in this opinion.

QUESTION II – FACTS AND OPINION:

PLEAS, in the process of responding to an inquiry of this Committee, has asked the Committee to examine the sample legal directory and specifically whether a notation “special preference for trial work, corporate tax matters and workman’s compensation” would, as an example, be an appropriate designation after a firm listing. DR 2-101 (D)(1) and DR 2-105 (A)(1) are pertinent rules for consideration. An examination of these rules discloses that a firm may not list itself as specializing unless it meets 2-105 (A)(1) (Patent, Trademark or Admiralty) or (4) the attorney has been designated as a specialist in a particular field of law by the authority having jurisdiction under state law to designate specialists. Vermont has no such system, therefore, specialty designation would be inappropriate. However, 2-105 (A)(2) provides that:

A lawyer may permit his name to be listed in lawyer referral service offices according to the fields of law in which he will accept referrals.

and DR 2-101 (D)(1) dealing with publicity in general states that while specialties may not be listed unless in compliance with 2-105 (A)(2) a lawyer may nevertheless list:

one or more fields of law in which the lawyer or law firm concentrates.

It would seem, therefore, that the preferences may be listed provided there is nothing that would confuse concentration or preference with specialization.