

# ADVISORY ETHICS OPINION 95-02

## SYNOPSIS:

Participation in a for-profit lawyer referral service without payment of a fee to the service does not violate the Code of Professional Responsibility.

## FACTS:

The inquiring attorney asked whether he may participate in a lawyer referral service which is a membership club whereby individuals joining the club gain access to a list of participating attorneys in their geographical area. For their membership dues club members are provided certain free services by the participating attorneys, such as simple will preparation and free initial consultation. They also receive discounted fees for other legal services, including hourly, contingent fee and flat rate work. The service refers a member to the participating attorney(s) in his or her geographic area. The planmember then contacts the attorney, and contracts with and pays the attorney directly for the legal services. The service provides no legal services for the member, and is not privy to and does not have any involvement with the attorney/client relationship between its planmembers and the participating attorney(s).

Planmembers are referred to attorneys based upon their geographic location by zip code or by the participating attorney's expressed geographic boundaries. Members are free to choose from the entire list of participating attorneys who are listed according to their location, areas of practice, foreign language fluency and/or special skills. All participating attorneys are required to be members in good standing of the bar of the state in which they practice, and to carry professional liability insurance.

The participating attorneys agree with the referral service to provide services to planmembers at discounted fees according to the club's fee schedule outline in its Plan and Guide book. The attorneys are not employees of the referral service and receive no compensation from it. The attorneys are paid directly by the planmember according to the discounted rate schedule. The attorneys pay nothing to the referral service to become participating attorneys.

## DISCUSSION:

The pertinent Rule now contains no criteria for attorney referral services which involve no payment by the attorney. DR 2-103(C) formerly provided as follows:

“A lawyer shall not request a person or organization to recommend or promote the use of his services or those of his partner or associates, or any other lawyer affiliated with him or his firm, as a private practitioner, except as authorized in DR 2-101, and except that

- (1) He may request referrals from a lawyer referral service operated, sponsored, or approved by a bar association and may pay its fees incident thereto.
- (2) He may cooperate with the legal service activities of any of the offices or organizations enumerated in DR 2-103(D)(1) through (4) and may perform legal services for those to whom he was recommended by it to do such work if:
  - (a) The person to whom the recommendation is made is a member or beneficiary of such office or organization; and
  - (b) The lawyer remains free to exercise his independent professional judgment on behalf of his client.”

DR 2-103(D) was eliminated in 1986.

DR 2-103(C) as amended now reads as follows:

“(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 advertising or written communication permitted by this rule and may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.”

In addition, EC 2-15 provides as follows:

“EC 2-15 The legal profession has developed lawyer referral systems designed to aid individuals who are able to pay fees but need assistance in locating lawyers competent to handle their particular problems. Use of a lawyer referral

system enables a layman to avoid an uninformed selection of a lawyer because such a system makes possible the employment of competent lawyers who have indicated an interest in the subject matter involved. Lawyers should support the principle of lawyer referral systems and should encourage the evolution of other ethical plans which aid in the selection of qualified counsel.”

If the referral service is operated as described herein, participation by lawyers would not violate the Code. Participating attorneys would not be required to be subscribers or to pay a fee for participation or referrals. As stated, upon request, a planmember in need of attorney’s services would be furnished the names of participating lawyers in the appropriate jurisdiction. The planmember may consult the referral attorney or select another lawyer. The referral attorney may accept or reject the representation. The program does not require disclosure of confidential information by the participating attorney to the referral service.

**CONCLUSION:**

The Committee is of the opinion that the described lawyer referral service operated by a for-profit organization does not violate the Code of Professional Responsibility.