

You advise that a lawyer approaches one or more auto body shops and/or tow truck operators and offers to pay a nominal sum (\$0.50 or \$1.00) for the rental usage of the customer list/ mailing list of the particular auto body or tow truck company. The lawyer then mails a brochure detailing the fact that, among other things, he specializes in handling auto accident/personal injury claims. You wish to know whether the payment of \$0.50-\$1.00 per name for the rental of the mailing list for marketing purposes of auto body/tow truck customers is violative of prohibitions on payment of referral fees.

Disciplinary Rule 2-103(D) [ DR:2-103] states that "a lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client, or as a reward for having made a recommendation resulting in his employment by a client, except that he may pay for public communications permitted by DR:2-101 and the usual and reasonable fees or dues charged by a lawyer referral service."

Ethical Consideration 2-7 [ EC:2-7] states that, "A lawyer should not compensate another person for recommending him, for influencing a prospective client to employ him, or to encourage future recommendations, except that he may pay for advertisements and other public communications, for participation in legal referral services, or for lawful prepaid legal services plans or legal services insurance."

As long as the auto body shops and tow truck drivers do not recommend the lawyer's services, attempt to influence clients to employ the lawyer or encourage future recommendations of the lawyer, the provisions of DR:2-103(D) and EC:2-7 would not be violated.

Therefore, the Committee believes that it is not unethical for a lawyer to pay an auto body shop and/or tow truck operator a nominal fee for rental usage of the customer/ mailing list so that the lawyer may mail the customers a brochure detailing the lawyer's services. The lawyer, however, must abide by the provisions of Canon 2 dealing with solicitation when writing to the customers.

You mention in your inquiry that the attorney is holding himself out as a specialist. See DR:2-104(A), which states, "a lawyer shall not hold himself out publicly as, or imply that he is, a recognized or certified specialist except in accordance with either DR:2-101, DR:2-102, DR:2-103 or DR:2-104(A)(1), (2) and DR:2-104(B)."

Committee Opinion  
October 27, 1987