

Committee Opinion
February 19, 1988

LEGAL ETHICS OPINION 1035

ATTORNEY – TRADE ASSOCIATION.

You advise that you have been asked to join a Trade and Barter Association. As part of its operation, the trade association charges all members a ten percent charge for acting as a clearinghouse in the various trades. When one participates in a trade, one obtains "trading dollars" which are used to purchase other goods or services which other members of the association have to offer. You also advise that the trade association wishes to list you as an attorney and perhaps refer business to you.

You ask three questions relative to the above. The Committee will answer these questions in the order presented in your letter. Your first question is whether the ten percent charge by the clearing association would be considered splitting a fee with a nonlawyer. Disciplinary Rule 3-102 states that "A lawyer or law firm shall not share legal fees with a nonlawyer. ..." Assuming that the ten percent charge is equivalent to the cash value of the services rendered, the Committee believes this violates DR:3-102.

Your second question is whether it is improper for the trade association to list you as an attorney. Disciplinary Rule 2-102(A) [DR:2-102] provides that "A lawyer or law firm may use or participate in the use of a professional card, professional announcement card, office sign, letterheads, telephone directory listing, law list, legal directory listing or a similar professional notice or device, unless it includes a statement or claim that is false, fraudulent, misleading or deceptive." As long as the trade association makes no false, fraudulent, misleading or deceptive claim, it would not be improper for the association to list you as an attorney. The Committee, however, also directs you to DR:2-101(B), which states that "a public communication for which a lawyer has given value must be identified as such unless it is apparent from the context that it is such a communication."

Your third question is whether the Trade and Barter Association may refer business to you. 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 and any qualified legal services plan or contract of legal services insurance as authorized by law, provided that such communication of the service or plan is in accordance with the standards of DR:2-101 or DR:2-104, as appropriate." Should the Trade and Barter Association refer business to you, it would appear that the ten percent fee was compensation for the referral. To do so would violate the provisions of DR:2-103(D).

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Legal Ethics Committee Notes. – Rule 1.5(e) permits fee sharing between lawyers in different firms provided the client consents and the fee is reasonable. The referring

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attorney may charge a fee for referring a case to another lawyer without further participation in the client's matter.

Rule 1.5(e) does not require that a lawyer sharing in fees also share responsibility, thus allowing "referral fees" if the client consents after full disclosure.