

Committee Opinion
October 19, 1992

LEGAL ETHICS OPINION 1497

ADVERTISING - REFERRALS –
NONLAWYER - CONFLICT OF
INTEREST: REFERRAL OF BUSINESS
TO FIRM BY TRADE ASSOCIATION.

You have indicated that a national trade association [Association] proposes an agreement with a law firm [Firm] wherein members of the Association would be invited to call the Association's legal department with their questions, certain of which would be handled by the Association's in-house legal counsel and others, such as those concerning only the individual member company and its particular business needs, would be analyzed by the Association on a preliminary basis and, if the member wished the matter to be referred to the Firm, the Association would prepare it for referral. You indicate that this preparation would involve identification of the member, the nature of the legal problem, and the current status of the member.

The Firm would provide an initial consultation to the member free of charge and further representation of the member would be at a discount from the Firm's usual hourly rates. You advise that the Association originated the idea of referring its members solely to the Firm's attorneys without any urging of compulsion from the Firm which would receive no fee or other remuneration from the Association for its affiliation with the Association and would pay no fee to the Association.

You indicate that the Association's members would be free to use other counsel instead of or in addition to the Firm. Furthermore, you indicate that the Firm has reviewed the Association's referral program, and the screening and referral form used in it.

You also indicate that the Association would publicize the program to its members, including the free consultation and the reduced rates. Finally, you advise that the Firm would review the advertising to be sure it contains no statements or claims that are false, fraudulent, misleading, or deceptive.

You have asked the Committee to opine whether, under the facts of the inquiry and relative to the Code of Professional Responsibility Disciplinary Rules regarding solicitation and advertising, it is proper for the Firm to establish and maintain the relationship with the Association as described. Your inquiries as to the Association's compliance with the Unauthorized Practice Rules [Part Six: Section I of the Rules of the Virginia Supreme Court] have been referred to the Standing Committee on Unauthorized Practice of Law for response.

This Committee is cognizant of the constitutional protections delineated by the U.S. Supreme Court in recognizing the right and desirability of organized groups to advise their members as to referrals for appropriate legal services. See, e.g., *NAACP v. Button*, 371 U.S. 415 (1963); *Brotherhood of Railroad Trainmen v. Virginia State Bar*, 377 U.S. 1 (1964); *United Mine Workers v. Illinois State Bar*, 389 U.S. 217 (1967); *United Transportation Union v. State Bar of Michigan*, 401 U.S. 576 (1971).

Committee Opinion
October 19, 1992

The appropriate and controlling disciplinary rules relative to your inquiry are:

DR:2-103(D) which, in pertinent part, prohibits a lawyer from compensating, in any form, 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;

DR:2-102(A) which permits a lawyer's participation in the use of professional notices and devices, including law lists, so long as such notice or device does not include any statements or claims that are false, fraudulent, misleading, or deceptive;

DR:2-101(A) which permits a lawyer to use or participate in the use of public communications so long as such communication does not contain any false, fraudulent, misleading, or deceptive statement or claim;

DR:5-106(B) which prohibits a lawyer from permitting a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services [emphasis added]; and

DR:3-101(A) which prohibits a lawyer from aiding a nonlawyer in the unauthorized practice of law.

See also Ethical Considerations 2-7 [EC:2-7] [advice and recommendation of third parties, including business associates, help in the layperson's informed selection of a lawyer]; 2-17 [EC:2-17] [suggesting that lawyers support the principle of lawyer referral systems and encourage the evolution of other ethical plans which aid in the selection of qualified counsel]; 2-28 [EC:2-28] [a lawyer is under no obligation to act as adviser or advocate for every person who may wish to become his client] and 5-23 [EC:5-23] [cautioning lawyers to exercise independent professional judgment on behalf of clients without regard to the economic, political, or social goals of third parties].

The Committee has previously opined that it is not improper for an attorney to participate with an organization which provides its [other] participants with a list of attorneys from which to choose an attorney or another of their own preference. LE Op. 333. Similarly, the Committee has earlier opined that an attorney may participate in a real estate settlement where a real estate firm has recommended to its customers that a specific attorney handle the closing, provided that certain requisites are met. LE Op. 539. Furthermore, the Committee has consistently recognized the positive role played by lawyer referral services while cautioning lawyers as to the parameters within which such services must operate. See, e.g., LE Op. 407, LE Op. 738, LE Op. 910, LE Op. 926, LE Op. 1014, LE Op. 1348.

In the facts you present, the Committee believes that a Firm participating in the manner described would not be in violation of DR:2-103(D) since the Firm will not compensate

Committee Opinion
October 19, 1992

the Association for having referred its members. The Committee is of the further opinion that the arrangement presented would not be violative of either DR:2-102(A) or DR:2-101(A) provided that no false, fraudulent, misleading or deceptive statements or claims were made in any publicity.

The Committee cautions that the Firm and each Firm lawyer who receives referrals from the Association should have the right at all times to decline to serve any Association member in any particular matter. ABA Comm. on Ethics and Prof. Resp. Informal Op. 1237 (August 9, 1972).

Moreover, in keeping with the mandates of DR:5-106(B), the Committee cautions that Firm lawyers providing legal services to Association members upon referral must not permit any direction or regulation by the Association in the lawyers' exercise of independent professional judgment to the individual client.

Finally, the Committee opines that if any activity of the Association is found to be in violation of the Unauthorized Practice Rules, it would be improper and violative of DR:3-101 for the Firm to assist in any such activity.