

Committee Opinion
December 14, 1992

LEGAL ETHICS OPINION 1501

NON-LAWYER - RECOMMENDATION
OF PROFESSIONAL EMPLOYMENT:
EMPLOYER OF FORMER (NON-
LAWYER) CLIENT AFTER CLIENT HAS
REFERRED NEW CLIENTS.

You have presented a hypothetical situation in which Attorney represented a client whose cause of action was settled out of court. The former client began a support group for those people allegedly injured in the same fashion as he was injured. The former client, because he was pleased with the representation, and without consideration from the Attorney, proffered the Attorney's name to those in the support group wishing to pursue a potential cause of action.

You indicate that Attorney now wishes to hire the former client to organize and manage the cases of those clients who are pursuing a cause of action similar to that of the former client. Some current clients whose cases would be monitored by the former client were referred to Attorney by the former client. Full disclosure would be made to all clients regarding the past legal relationship between Attorney and the former client/potential employee.

You have asked the Committee to opine whether, under the facts of the inquiry, the employment of a former client by Attorney to manage and organize the cases of current clients, some of whom were referred to Attorney by the former client, and after full disclosure of the past legal relationship between Attorney and potential employee, violates any ethical standard in the Commonwealth of Virginia.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:3-104 which delineates the permissible activities and required supervision of nonlawyer personnel; and DR:2-103(D) which prohibits a lawyer from compensating 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.

The Committee has earlier opined that a lawyer who has formerly represented and concluded settlement of claims in a wrongful death matter may subsequently represent another individual in a substantially related matter against a third party who precipitated the decedent's demise and whose conduct is the basis for the prospective client's claim. LE Op. 648.

The Committee assumes that the potential employee is a nonlawyer and thus the Committee cautions that Attorney is responsible for strict compliance with the provisions of DR:3-104. Specifically, the Committee is concerned with the function described as "manag[ing] and organizing" cases by the potential nonlawyer employee. The Committee reiterates the exhortations of the Disciplinary Rule, which require that the nonlawyer be under the direct supervision of a licensed attorney, that the relationship with the client is the responsibility of the attorney, and that the attorney not permit the nonlawyer employee to communicate with clients or the public without first disclosing his

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nonlawyer status. Furthermore, the Committee consistently has been of the opinion that, when read together, the two applicable disciplinary rules, DR:3-104 and DR:2-103, do not intend for solicitation of employment on behalf of the lawyer to be a duty which may be delegated to a nonlawyer employee, as a routine element of the position. In addition, the Committee cautions that employment of the former client must not be predicated upon any promise of "bonus" or additional compensation in exchange for his prior or subsequent securing of clients for the attorney.

Finally, should such solicitation of employment be related to personal injury or wrongful death actions, and should such solicitations be carried on in-person, the constraints of DR:1-102(A)(2) would preclude Attorney from utilizing the nonlawyer employee to circumvent the constraints of DR:2-103(F). See LE Op. 1290; see also LE Op. 1068 and LE Op. 1295.