

LEGAL ETHICS OPINION 1632

ATTORNEY RECEIVING REFERRALS  
FROM "LENDER SERVICE BUREAU"  
AND PAYING FEE TO BUREAU;  
REFERRAL OF CLIENTS; SHARING OF  
FEES.

You have presented a hypothetical situation in which a law firm does extensive work related to mortgage loans which are insured or guaranteed by state and federal agencies. The law firm bills the client directly for its services, approximately \$500 for each case, and receives compensation directly from the client, who is eventually reimbursed pursuant to that specific loan guarantor's policies regarding legal services.

You indicate that, while involved with negotiations with a large national lending institution regarding that lender's distressed real estate business, the law firm received a proposal from an out-of-state institution which identified itself as a "lender service bureau". The bureau is run by or associated with attorneys. It is responsible for assigning all legal work to firms in a locality, but does no legal work in connection with the case nor does it bear any responsibility for the work. The bureau indicated that no cases would be referred to the firm from the prospective client/lender unless the firm altered its billing practices as follows: (1) the firm pays a \$75 or \$100 fee to the bureau, pursuant to a bill sent by the bureau to the firm, as a "service fee" before a case is assigned or immediately upon assignment; (2) the firm does the work assigned; (3) the firm then bills the client/lender for the full amount allowed by the loan guarantor, usually approximately \$500; and (4) the client applies to the guarantor for compensation for the full "legal" fees incurred, which includes the "service fee". At no point would the guarantor be informed about the "service fee". You indicate that the service bureaus maintain that they are charging a legitimate fee for their non-legal, non-referral services such as loan tracking, document handling, preparation and mailing of referrals, and so forth.

You have asked the committee to opine whether, under the facts of the inquiry, it is proper for the law firm to participate in the fee arrangement as described. In addition, you have asked that the committee opine as to whether the firm should disclose the transactions described to the proper authorities.

The appropriate and controlling disciplinary rules relative to your inquiry are DR:2-103(D) which in pertinent part prohibits a lawyer from compensating a person or organization to recommend or secure his employment by a client except for usual and reasonable fees or dues charged by a lawyer referral service; DR:3-102 which precludes a lawyer from sharing legal fees with a non-lawyer except in certain limited circumstances, none of which are applicable to the facts presented; DR:1-102(A)(4) which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and DR:7-102(B)(1) which requires that a lawyer who receives information clearly establishing that a person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

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The committee has previously opined that, although voluntary recommendations of a particular law firm made by an individual who is acquainted with the firm are not improper, the plain language of DR:2-103(D) precludes a lawyer from offering or paying any compensation to that person. See LE Op. 1295, LE Op. 1501. The committee has also opined that an attorney may not share legal fees with an advertising agency since that agency is not an employee of the lawyer or law firm. See LE Op. 1438. Furthermore, the committee has opined that legal fees may not be divided between lawyers in different firms merely in exchange for referral of cases, when no meaningful legal services were performed by the referring lawyer. See LE Op. 1488. In addition, the committee has previously opined that, although an attorney has an affirmative duty to report a fraud perpetrated by an individual, not his client, upon a tribunal, no such duty exists when the fraud has been perpetrated upon a person other than a tribunal. See LE Op. 376.

In the facts you present, the committee interprets the "service fee" to be a mere referral fee in exchange for which lawyer will receive legal employment. Thus, the committee opines that such an arrangement would be improper and violative of DR:2-103(D). Similarly, the committee is of the opinion that the service fee would constitute an improper sharing of fees with non-lawyers in violation of DR:3-102. As to your inquiries regarding whether such a fee is contrary to public policy or fraudulent, the committee believes that such determinations are questions of law beyond the committee's purview. See, however, Va. Code § 38.2-4614.

Furthermore, the committee believes that the lawyer's involvement in the arrangement described would be tantamount to the lawyer's engaging in subterfuge against his own client and therefore violative of DR:1-102(A)(4).

Finally, the committee opines that, since the third party service bureau is not apparently engaging in fraud against a tribunal, nor is it a lawyer or law firm, despite possible ownership by attorneys, the law firm is under no ethical obligation to disclose the bureau's operations to the proper authorities under DR:7-102(B)(1). However, the committee cautions that should the law firm determine that the activities of the attorneys holding an ownership or management interest in the service bureau constitute misconduct which raises a substantial question as to those attorneys' honesty, trustworthiness, or fitness to practice law, an obligation to report that misconduct would arise under DR:1-103. See LE Op. 1522.

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