

LEGAL ETHICS OPINION 1689

ATTORNEY PARTICIPATION IN  
REFERRAL SERVICE (LEGAL-FRIEND)  
THAT OFFERS LEGAL REFERRALS TO  
MEMBERS AT DISCOUNT.

You have presented a hypothetical situation in which a legal referral service proposes to contract with participating attorneys who will agree to discount fees in anticipation of volume business. Services will be offered to nonlawyer subscribers through a newsletter, which will include the areas of practice and fees of participating attorneys as well as articles written by those attorneys on legal subjects. The newsletter would not hold the attorneys out as specialists. Subscribers would pay a monthly fee to the referral service for that information. Subscribers would not call the referral service to obtain legal services; the subscribers would contact the attorneys directly; thus, there would be no "screening" of the subscribers' calls by the referral service.

The referral service plans to have at least five attorneys listed in each geographic area; however, there may be less than five attorneys in each practice area. The attorneys would have the opportunity to review all advertising to be used by the referral service. The referral service will not set the lawyers' fees; rather, the individual lawyers will do so. However, the contract between the referral service and the lawyers does state that the lawyers will provide estimates of the total cost of individual cases in advance whenever possible. The contract also prohibits the lawyers from joining any other lawyer referral service company while affiliated with the service of this inquiry.

Under the facts you have presented, you have asked the committee to opine as to (1) whether the referral service's listing of the practice areas of the attorneys is an improper indication of specialization; (2) whether there must be not only five attorneys in each region but also five attorneys listed in each practice area; (3) whether the advertisements submitted with the inquiry are proper; and (4) whether the non-compete clause regarding other referral services is an improper restraint on the contracting attorneys.

The appropriate and controlling disciplinary rules relative to your inquiry are DR:2-101 which delineates requirements for lawyer advertising; DR:2-102 which states the requirements for letterheads, lawyer listings, etc.; DR:2-103 which establishes limits on lawyer recommendations and solicitations; DR:2-104(A) which prohibits a lawyer, outside exempt areas, from holding himself out as a recognized or certified specialist; DR:2-106(A) which prohibits a lawyer from entering an agreement restricting his right to practice law after termination of the agreement (with an exception for retirement arrangements); and DR:5-106 which establishes specific requirements regarding a lawyer's need to prevent third parties from influencing the attorney/client relationship.

The committee responds to your inquiries relative to the facts you have presented as follows:

1. As to whether the referral service may properly list the areas of practice for each listed attorney, the determinative rule is DR:2-104(A), prohibiting attorneys from holding themselves out as a “recognized or certified” specialist, except in certain situations. In the specific context of referral services, the committee opined that it is not improper for a lawyer referral service to list the areas of practice of the participating attorneys. See, LE Op. 1029. Accordingly, the committee opines that the listing of practice areas for the attorneys in your inquiry is not improper under DR:2-104(A).

2. As to whether there must be a particular number, such as five, of attorneys in each practice area participating in this referral service, the composition of listed attorneys for this service must not be such that the arrangement would deceive the public in violation of DR:2-101, DR:2-102, or DR:2-103. See, LE Op. 926. Previously, the committee opined that two law partners advertising their firm's phone number as a referral service was improperly deceptive. See, LE Op. 1029. The committee has further opined that for a referral service not to be deceptive, it should have a minimum number of attorneys in each region, with a suggestion of five for that minimum. See, LE Op. 1348, LE Op. 1543. The facts of the inquiry do not include exact information as to the required number of attorneys per practice area, in each region. The committee therefore notes, generally, that for the lawyers participating in this service to avoid a Canon 2 violation, the actual configuration of attorneys must be such that subscribing members of the public are not deceived as to the availability of a variety of lawyers.

3. Copies of several specific advertisements were included with this inquiry. The committee notes that review of specific advertisements is actually within the purview of the Committee on Lawyer Advertising and Solicitation (COLA). Should you wish specific comment on the content of those advertisements, you should submit them to the COLA for review. The committee does caution that any statements in the referral service's advertising which conflict with Canon 2 could trigger automatic violations for the participating attorneys. Accordingly, it is crucial that each participating attorney examine all advertisements in advance to prevent the inclusion of statements that are false, fraudulent, misleading, or deceptive.

4. As to whether the non-compete clause of the attorney/referral service contract is improper, the committee notes that the contract provision restricts only the right of an attorney to join another referral service during the time such attorney is affiliated with this inquiry's referral service. In contrast, DR:2-106(A) prohibits restrictions of an attorney's right to practice law after the termination of a relationship created by the agreement. The committee opines that the restriction in your inquiry is not improper under this rule since it does not actually limit the right to practice law, nor does it extend beyond the termination of the attorney/referral service relationship.