

ETHICS OPINION

030716

The following ethics opinion was issued on July 3, 2003, by the Ethics Committee of the State Bar of Montana in response to a question submitted by a Bar member:

FACTS:

Attorney proposes creating a regional lawyer referral service comprised of several sole practitioners. The attorney members will be charged either a flat fee per year or a fee per referral to belong to the service. All the fees generated will be used to pay for advertising and overhead. The service will require member attorneys to participate in pro bono legal services. The referral service will be organized as an LLC, but will operate as a not-for-profit LLC, though attorney acknowledges that it does not fit into the nonprofit corporate classification (i.e., formed for the “public good”). Attorney adds that in the event the lawyer referral service made a negligent referral, the referral service would accept liability.

Attorney’s reasons for creating the referral service are to network the solo practitioners, provide more efficient public access to attorneys within a focused practice area and reduce the solos’ advertising expenses.

QUESTION PRESENTED:

Is the private lawyer referral service network proposed permitted under Montana’s Rules of Professional Conduct?

SHORT ANSWER:

No. It is prohibited by Montana’s current Rule 7.2 (c) of the Rules of Professional Conduct and would be prohibited under the proposed new Rule 7.2 (b) currently under consideration by the Montana Supreme Court.

DISCUSSION:

The current Rule 7.2 (c) of the Montana Rules of Professional Conduct states the general principle that lawyers are not permitted to pay others for channeling professional work, with some exceptions:

RULE 7.2 ADVERTISING

(c) A lawyer shall not give anything of value to a person for recommending the lawyer’s services, except that a lawyer may pay the reasonable cost of advertising or written communication permitted by this rule and may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.

Restrictions on referral services are explained in Comment [6] of the Model Rules:

A lawyer referral service...is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by laypersons to be

consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this [Model] Rule only permits a lawyer to pay the usual charges of a not-for-profit or [in the case of the Model Rule] qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for prospective clients. See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act (requiring that organizations that are identified as lawyer referral services (i) permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable objective eligibility requirements as may be established by the referral service for the protection of prospective clients; (ii) require each participating lawyer to carry reasonably adequate malpractice insurance; (iii) act reasonably to assess client satisfaction and address client complaints; and (iv) do not refer prospective clients to lawyers who own, operate or are employed by the referral service.)

A 1989 Report of the ABA Standing Committee on Lawyer Referral and Information Service concluded that the two important functions of a lawyer referral service are to screen inquiries and to provide the client with an unbiased referral to an attorney who has experience in the area of law appropriate to the client's need.

The attorney's proposal, while in many ways laudable (particularly the pro bono requirement), does not satisfy the necessary components of a not-for-profit referral program.

The missing components have the effect of turning the proposed program into essentially a for-profit referral program for solo practitioners in a specific region. This conclusion also applies under the proposed new Rule 7.2 (b)[1], currently submitted to the Supreme Court, for which the Court accepted comments until September 1, 2003.

CONCLUSION:

The proposed lawyer referral service is not permissible under Rule 7.2 (c) of Montana's Rules of Professional Conduct.

THIS OPINION IS ADVISORY ONLY

Notes

1 RULE 7.2: ADVERTISING

(c) (b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may:

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a not-for-profit lawyer referral service or legal service organization plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority; and

(3) pay for a law practice in accordance with Rule 1.17.

