

Nebraska Ethics Advisory Opinion for Lawyers
No. 74-7

A. LOCAL BAR ASSOCIATION MAY FORM A PANEL OF ATTORNEYS, EACH OF WHOM ARE WILLING TO SPEND A PERIOD OF TIME ONE DAY A WEEK ON A LOCAL COLLEGE CAMPUS TO MAKE LEGAL SERVICES READILY AVAILABLE TO A STUDENT SENATE OF THE CAMPUS AND TO INDIVIDUAL STUDENTS IN NEED OF LEGAL SERVICES PROVIDED THEY FOLLOW THE FOLLOWING RULES: (1) THE LAWYER ON CAMPUS CAN ADVISE THE STUDENTS ON ANY CIVIL MATTER; (2) IF THE STUDENT HAS A LEGAL PROBLEM WHICH REQUIRES LITIGATION, OR OTHER SUBSTANTIAL LEGAL SERVICES, THE LAWYER ON CAMPUS WILL PRESENT THE STUDENT WITH THE ROSTER OF LAWYERS WHICH HAVE AGREED TO PARTICIPATE, AFTER STRIKING HIS OWN NAME AND THE OTHER LAWYERS IN HIS FIRM; (3) THE LAWYER ON CAMPUS SHALL MAKE NO RECOMMENDATION AS TO WHICH LAWYER ON THE ROSTER SHOULD BE CONSULTED OR RETAINED; AND (4) WHEN CONSULTED ABOUT ANY CRIMINAL MATTER THE LAWYER ON CAMPUS WILL NOT GIVE ADVICE BEYOND PRESENTING THE ROSTER OF LAWYERS OR EXPLAINING THE PROCEDURE FOR OBTAINING APPOINTMENT OF AN ATTORNEY BY THE COURT.

INQUIRY MADE

Inquiry is made on behalf of the Buffalo County Bar Association whether the formulation of a Lawyer Referral Service by the said bar association in response to a request of the student senate of the Kearney State College to make legal services available to the students as well as the student senate, is in compliance with the Code of Professional Responsibility.

FACTS

The Buffalo County Bar Association set up a lawyer referral office on the campus of the Kearney State College and agreed to have an attorney on campus for

at least two hours one day each week that school is in session. The student senate will pay the sum of \$50 per session for the services of such an attorney to a nonprofit corporation to be formed. The fees to be paid by the student senate to the nonprofit corporation have not been definitely earmarked, but the purposes generally discussed were "continued legal education for the bar association" and the "purchase of additional law books for the county law library".

The ground rules adopted by the bar association are:

1. The lawyer on campus can advise the student on any civil matter.
2. If the student has a legal problem which requires litigation, or other substantial legal services, the lawyer on campus will present the student with the roster of lawyers after striking his own name and the names of other lawyers in his firm.
3. The lawyer on campus shall make no recommendation as to which lawyer on the roster should be consulted or retained.
4. When consulted about any criminal matter the lawyer on campus will not give advice beyond presenting the roster of lawyers or explaining the procedure for obtaining appointment of an attorney by the Court.

A total of twenty-four lawyers have signed up and agreed to serve at least one session during the present school year. Two or three more have agreed to serve if and when The Advisory Committee approves the said lawyer referral system as being in compliance with the Code of Professional Responsibility. The system commenced on September 5, 1974, the date this inquiry was made.

FUNCTION OF ADVISORY COMMITTEE

The Advisory Committee has long adhered to the policy summarized in [Opinion No. 68-1](#), which you have in your Nebraska Lawyers Desk Book, viz,

"Opinions of The Advisory Committee on matters of professional ethics are limited to situations in which a lawyer seeks the opinion of the Committee as to the ethical propriety of a course of action in which he desires to engage."

There are several reasons for the justification of this policy, the most obvious of which is that under the Disciplinary Rules, the Committee may be called upon to review disciplinary proceedings involving the conduct or action which has already been taken, and the Committee cannot be in the position of having prejudged the matter.

However since some of the lawyers in your bar association have declined to participate until an opinion of approval has been received from The Advisory Committee, the Committee feels an exception to the general policy is warranted in this instance.

ETHICAL CONSIDERATIONS AND DISCUSSION

EC 1-1 provides:

"A basic tenet of the professional responsibility of lawyers is that every person in our society should have ready access to the independent professional services of a lawyer of integrity and competence. Maintaining the integrity and improving the competence of the bar to meet the highest standards is the ethical responsibility of every lawyer."

EC 2-15 provides:

"The legal profession has developed lawyer referral systems designed to aid individuals who are able to pay fees but need assistance in locating lawyers competent to handle their particular problems. Use of a lawyer referral system enables a layman to avoid an uninformed selection of a lawyer because such a system makes possible the employment of competent lawyers who have indicated an interest in the subject matter involved. Lawyers should support the principle of lawyer referral systems and should encourage the evolution of other ethical plans which aid in the selection of qualified counsel."

Lawyer referral panels of different types have been approved by the Committee on Professional Ethics of The American Bar Association. For instance its Formal Opinion 205 provides:

"A local bar association may form a panel of attorneys who are willing to serve low-income persons at fees which are within the financial ability of the client if (1) the plan is supervised by the local bar association, (2) no individual attorney's name is advertised, and (3) such publicity as is necessary is directed toward apprising low-income persons of the method and means by which the plan is to be carried out."

In discussing this rule the Committee said in part:

"We are of the opinion that the plan here presented does not fall within the inhibition of the Canon. No solicitation for a particular lawyer is involved. The dominant purpose of the plan is to provide as an obligation of the profession competent legal services to persons in low-income groups at fees within their ability to pay. The plan is to be supervised and directed by the local Bar

Association. There is to be no advertisement of the names of the lawyers constituting the panel. The general method and purpose of the plan only is to be advertised. Persons seeking the legal services will be directed to members of the panel by the Bar Association. Aside from the filing of the panel with the Bar Association, there is to be no advertisement of the names of the lawyers constituting the panel. If these limitations are observed, we think there is no solicitation of business by or for particular lawyers and no violation of the inhibitions of Canon 27."

This Formal Opinion 205 has been followed by several formal and informal opinions and cited in many others. Formal Opinion 291 may have some application here. It provides:

"Publicity for a lawyer's referral service need not state that the service is designed for persons in low income groups.

A local bar association operating a lawyers' referral service should not operate the plan for the benefit of any particular group of attorneys although it may use its reasonable discretion in deciding whether to confine the referral panel to bar association members only.

A bar association may require members of a lawyer referral panel to help finance the service either by a flat charge or a percentage of fees collected."

It is the opinion of the Committee that the referral panel set up by the Buffalo Bar Association under the ground rules prescribed if strictly adhered to, does not violate the Code of Professional Responsibility.

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