

Nebraska Ethics Advisory Opinion for Lawyers
No. 89-3

A LAWYER MAY PARTICIPATE IN A "FOR-PROFIT" LAWYER REFERRAL PROGRAM IF THE LAWYER DOES NOT GIVE ANYTHING OF VALUE TO THE PROGRAM FOR RECOMMENDING THE LAWYER'S SERVICES AND IF THE PROGRAM IS IN COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THE CODE OF PROFESSIONAL RESPONSIBILITY. THE LAWYER MAY OFFER REDUCED FEES OR A FREE CONSULTATION TO THOSE CLIENTS THAT HAVE BEEN REFERRED UNDER THE LEGAL REFERRAL PROGRAM. THE BURDEN IS UPON THE LAWYER TO ASSURE THAT THE PROGRAM COMPLIES WITH THE APPLICABLE PROVISIONS OF THE CODE. ANY PAYMENT BY THE LAWYER FOR THE ADVERTISING AND PROMOTIONAL COSTS OF, AND ADMINISTRATIVE CHARGES OF, A SECOND PARTY WOULD BE A PROHIBITED PAYMENT OF VALUE FOR RECOMMENDING THE LAWYER'S SERVICES. WHILE A LAWYER MAY PAY "SELF ADVERTISING" COSTS, A LAWYER MAY NOT PAY ANOTHER TO ADVERTISE AND THEN REFER CLIENTS TO HIM/HER.

FACTS

An attorney is considering participating in a private lawyer referral program. This program would be operated by a private, for-profit Nebraska corporation and would maintain one or more special "900 service" telephone numbers that would allow it to receive calls from individuals who are interested in obtaining the services of a lawyer. The toll fees generated from the 900 service numbers would be the primary source of revenue for the corporation.

It is proposed that, although the corporation would offer no legal advice in connection with the phone calls it would receive, it would obtain certain information from the potential client and forward this information to one of the participating lawyers. Participating lawyers would be asked to execute a contract requiring them to pay

the corporation an amount equal to their pro rata share of the total advertising and promotional expenses incurred by the corporation, plus a reasonable fee for the administration of the company's advertising program. No other referral fee or other fee would be charged to the lawyers associated with the program. It is also proposed that the participating lawyers might be required to offer reduced fees or free initial consultations as part of their agreement with the corporation. The corporation seeks to expand its referral services to other professions, including physicians, architects, engineers and CPAs.

QUESTIONS PRESENTED

1. May a licensed member of the Nebraska State Bar Association participate in such a for-profit lawyer referral service.?
2. Does the payment of advertising expenses for promotion of the referral service itself violate the provisions of DR 2-103?
3. Would an agreement by the participating lawyer to offer reduced fees or free initial consultations be permissible?

DISCUSSION

In [Advisory Opinion No. 87-2](#), the Committee concluded:

"An attorney may participate in a 'for-profit' lawyer referral program if the attorney does not give anything of value to the program for recommending his services and if the program is in compliance with the applicable provisions of the Code of Professional Responsibility. It is the individual attorney's responsibility to assure the program's compliance with the Code."

The Committee further noted that DR 2-103 (A) of the Code of Professional Responsibility provides:

"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 costs of advertising or written communication permitted by these rules and may pay the usual charges of a not-for-profit legal referral service or other legal service organization."

[Advisory Opinion 87-2](#) established that a Nebraska lawyer may participate in a for-profit lawyer referral service, but that it is the lawyer's ultimate responsibility to determine whether the activities of the lawyer referral service comply with the Provisions of the Code of Professional Responsibility. The Committee in [Opinion 87-2](#) discussed the restrictions on advertising that the referral service might engage in under DR 2-101 (F), 2-104 (A) and (B), as well as the preservation of confidences and secrets of clients under Canon 4, and any imposition of territorial limits that might violate EC 2-31. In addition, the question of the giving of value for such programs was addressed in [Opinion 87-2](#). A thorough reading of [Opinion 87-2](#), in conjunction with this opinion, is recommended to any lawyer considering participation in a for-profit lawyer referral program.

In [Opinion 87-2](#), the Committee answered the question of whether an agreement between the referral service and the lawyer to offer reduced fees or free consultations is proper. The Committee concluded that it was proper for a lawyer to make such an agreement as such concessions would not constitute the giving of "anything of value to a person for recommending the lawyer's service" within the meaning of DR 2-103 (A) and would in fact result in a benefit to the client.

The corporation proposing the legal referral service also plans to offer such a service to persons in professions other than the legal profession. While the facts presented do not so specify, it is the opinion of the Committee that such referral services should not be offered in conjunction with the legal referral service under the same name. Any advertising or publicity that

includes the referral services for other professions in conjunction with the lawyer referral service would tend to mislead the public and would be in violation of DR 2-101 (A).

In completely addressing the request before the Committee in this opinion, it is necessary to further evaluate the proposed program, particularly with regard to its propriety under DR 2-103 (A). The Nebraska version of the Code of Professional Responsibility has been amended so that the provision that previously limited participation in lawyer referral services that were sponsored by or approved by a bar association has been eliminated. See, former DR 2-103 (C) (1). Subsequent to the revision, the Committee limited the propriety of participation in a lawyer referral service to those services that were not-for-profit in [Advisory Opinion 83-4](#). To the extent that [Opinion 83-4](#) limited participation in a lawyer referral service to those programs that are not for profit, it was superseded by [Opinion 87-2](#).

The provisions of DR 2-103 (A) clearly allow a lawyer to pay for advertising or written communications generated by the lawyer ("self advertising"). It is also clear that a lawyer may pay the "usual charges" of a not-for-profit lawyer referral service or other legal service organization. It is the opinion of the Committee, however, that paying a second party for the second party's advertising and promotional expenses, plus an administration fee, falls squarely within the prohibition against giving "anything of value to a person for recommending the lawyer's services" and does not fall within the exception for advertising expenses.

CONCLUSION

A lawyer may participate in a "for-profit" lawyer referral program if the lawyer does not give anything of value to the program for recommending the lawyer's services and if the program is in compliance with the applicable provisions of the Code of Professional Responsibility. The lawyer may offer reduced fees or a free consultation to those clients that have been referred under the legal referral program. The burden is upon the lawyer to

assure that the program complies with the applicable provisions of the Code. Any payment by the lawyer for the advertising and promotional costs of, and administrative charges of, a second party would be a prohibited payment of value for recommending the lawyer's services. While a lawyer may pay "self advertising" costs, a lawyer may not pay another to advertise and then refer clients to him/her.

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