

Utah Ethics Opinions

2007.

07-01. Utah State Bar

Ethics Advisory Opinion Committee

Opinion No. 07-01

March 9, 2007

¶ 1. Issue: May a lawyer purchase the exclusive right to referrals generated from the membership base of an organization whose members from time to time may have need of the legal services offered by that lawyer?

¶ 2. Opinion: The proposed arrangement, which contemplates the exclusive funneling of referrals to one lawyer or firm, is not permitted, as it violates Rule 7.2(b), which prohibits a lawyer from giving anything of value to a person for recommending the lawyer's services. The fact that the recommendation is made by an organization does not change the outcome here.

¶ 3. Facts: A Utah for-profit organization provides an array of services to its members, including assistance in finding legal representation for its members for various circumstances, including immigration, criminal defense and personal injury following an automobile accident. This organization has solicited a Utah law firm to purchase the exclusive right to receive referrals generated by its membership base, for members who need legal consultation following an automobile accident.

¶ 4. Analysis: Rule 7.2(b) of the Utah Rules of Professional Conduct sets out the basic rule that applies to the issue presented:

(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 legal service plan or a lawyer referral service;

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

(4) divide a fee with another lawyer as permitted by Rule 1.5(e).¹

This fundamental rule is elaborated upon by Comment [5]

to the Rule, which further states: "Lawyers are not permitted to pay others for channeling professional work."² Under the plain language of this Rule and the explanatory comment, a lawyer would be prohibited from purchasing exclusive referral rights from the organization, because that would constitute paying another person for recommending the lawyer's services.³

¶ 5. Rule 7.2(b) contains several exceptions to this blanket prohibition. Subsection 7.2(b)(2) permits a lawyer to "pay the usual charges of a legal service plan or lawyer referral service." This provision of the Utah Rules of Professional Conduct differs from the American Bar Association Model Rule, which permits a lawyer to pay the usual charges of a legal service plan or a "not-for-profit or qualified" lawyer referral service.⁴ It would be inappropriate to conclude, however, that the difference between the Utah Rule and the ABA Model Rule was intended to permit a lawyer to avoid the prohibition of Rule 7.2(b) through the use of an organization that is not, in fact, a "lawyer referral service" in even the most colloquial sense of the term.

¶ 6. Comment [6] to Rule 7.2 defines a lawyer referral service as "an organization that holds itself out to the public to provide referrals to lawyers with appropriate experience in the subject matter of the representation." At a minimum, Rule 7.2(b)(2) requires that the lawyer referral service be available to the public and that it provide referrals to multiple lawyers and law firms, not to a single lawyer or a single law firm.

¶ 7. Comment [6] to Rule 7.2 also defines a legal service plan as "a prepaid or group legal service plan or similar delivery system that assists prospective clients to secure legal representation." Thus, the "plan" under Rule 7.2(b)(2) must be a provider of legal services to plan members using the services of licensed lawyers.⁵ The organization at issue provides no legal services to its members; the lawyers do not provide legal services "through the plan."

¶ 8. Conclusion: The organization in this case is not operated as a public service, but rather channels legal work to a single lawyer or firm who has paid the organization for that privilege. The organization is not, therefore, a "legal service plan" or a "lawyer referral service" within the meaning of Rule 7.2(b)(2), and the proposed exclusive funneling of referrals to one lawyer or firm that has paid for the privilege violates Rule 7.2(b)'s prohibition against giving anything of value to another person for recommending a lawyer's services.⁶

Footnotes:

1 Utah Rules of Professional Conduct 7.2(b) (2006).

2 *Id.* cmt. [5].

3 "Person" in Utah is generally defined to include any
4 "individual, firm, company, association or corporation."
5 *See, e.g.*, Utah Code Ann. §§ 48-2a-101(12); 76-1-601 and
6 78-27-23 (2006).

7 4 ABA Model Rules of Professional Conduct 7.2(b)(2)
8 (2002).

9 5 Utah Rules of Professional Conduct, Rule 7.3, Cmt. [8].
10 Comment [8] describes lawyers participating in a group or
11 prepaid legal services plan as "provider[s] of legal services
12 through the plan."

13 6 As we have concluded that the organization at issue is
14 neither a prepaid or group legal services plan nor a lawyer
15 referral service for which a lawyer may pay the "usual
16 charges" pursuant to Rule 7.2(b), we do not reach the issue
17 of whether this organization violates rule 7.3(a) through its
18 use of in-person or other real-time communications to
19 solicit memberships to the organization.