

## Utah Ethics Opinions

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Utah State Bar

Ethics Advisory Opinion Committee

Opinion No. 96-12

Approved January 24, 1997

**Issue:** Is it ethical for an attorney to charge for legal advice given to callers using a "1-900 number" that would automatically bill the caller on a per-minute basis?

**Opinion:** It is not unethical for an attorney to give legal advice over the telephone and charge for such advice by the use of a 1-900 number.

**Facts:** An attorney proposes to obtain and advertise a telephone number that is accessed by first dialing 1-900 (a "1-900 number") and to give general legal advice to callers. Advertisements promoting the 1-900 legal-advice line would state that use of the number is a toll call. Upon dialing the number, the caller would hear an introductory taped message describing the terms of the relationship to provide only general legal information, and indicating the cost of the call and legal advice. Callers would be able to terminate the call after the introductory message and not incur any charges. Legal advice would be given only by licensed members of the Utah State Bar. All callers would also be advised that no attorney/client relationship would be created, even upon receiving legal advice and incurring charges.

**Analysis.** Assuming that the requirements of Rules 7.1 and 7.3 are complied with, (fn1) the use of a 1-900 telephone service to provide "general" legal advice is not prohibited under the Utah Rules of Professional Conduct. The request does, however, pose a more difficult issue by indicating the intent to disclaim directly to a caller the creation of an attorney/client relationship. Such a disclaimer of an attorney/client relationship *may* be effective where the individual receiving the information has no expectation that an attorney/client relationship is created. (fn2) However, if legal advice is sought from an attorney, if the advice sought is pertinent to the attorney's profession, and if the attorney gives the advice for which fees will be charged, an attorney/client relationship is created that cannot be disclaimed by the attorney giving the advice. (fn3) The attorney/client relationship may be brief and may be subject

to a number of agreed-upon limitations, but it is an attorney/client relationship, and it is one to which confidentiality, competence, conflicts, malpractice and other obligations would apply. (fn4) Further, Rule 1.8(h) may apply to prevent a lawyer from seeking "an agreement prospectively limiting the lawyer's liability to a client for malpractice," except in certain narrow circumstances. (fn5)

**Conclusion.** Establishing a 1-900 legal-advice line and charging clients for the time spent discussing the issue on the telephone with a licensed attorney is not per se unethical. However, the attorney should be aware that, because an attorney/client relationship is created when legal advice is sought and obtained, no matter how "general," all the ethical rules apply to that relationship. Further, the attorney would be well-advised to keep adequate records of charges to clients as well as advice given. (fn6)

## Footnotes

1. Rule 7.1 generally prohibits false or misleading solicitations and statements likely to "create unjustified expectation about results." Rule 7.3 restricts certain in-person solicitations. Utah Rules of Professional Conduct 7.1, 7.3.

2. *See, e.g., In re Petrie*, 742 P.2d 796 (Ariz. 1987), for the proposition that the test of whether an attorney/client relationship exists, in part, is subjective with the reasonable belief of the client that such a relationship exists.

3. An attorney/client relationship is proved by showing that a party seeks and receives the advice of an attorney in matters pertinent to the lawyer's profession. *Breuer-Harrison, Inc. v. Combe*, 799 P.2d 716, 727 (Utah App. 1990), citing with approval *People v. Morely*, 725 P.2d 510, 517 (Colo. 1986) (en banc), and *Steinbach v. Meyer*, 412 N.W.2d 917, 918 (Iowa Ct. App. 1987).

4. An attorney/client relationship can arise from brief informal conversation in person or by telephone, even though no fee is charged and no contract of employment is signed. Michigan Ethics Opinion CI-1153, reported in ABA/BNA Lawyers' Manual on Prof. Conduct [1986-90] 901:4756 (1986); *Franko v. Mitchell*, 762 P.2d 1345 (Ariz. Ct. App. 1988). Some states have declined to find that any attorney/client relationship is created on the basis of a single undocumented telephone call that is later used to attempt to disqualify an attorney, Vermont Ethics Opinion 84-5, reported in ABA/BNA Lawyers' Manual on Prof. Conduct [1981-85] 801:8608 (1985).

5. Utah Rules of Professional Conduct 1.8(h).

6. This fact situation is to be distinguished from pro bono lawyer referral programs where legal topics, legal access, and legal service providers are discussed, but where no legal advice is rendered, no fee is charged, and any attorney/client relationship is disclaimed. Arizona Ethics Opinion 91-05, reported in ABA/BNA Lawyers' Manual on Prof. Conduct [1986-90] 1001:1401. It should be noted, however, at least one state has found that an attorney/client relationship does exist in a lawyer referral program if only for purposes of the initial interview, so that the confidentiality of the conversation is protected even though no ongoing attorney/client relationship is formed. Iowa Ethics Opinion 94-33, reported in ABA/BNA Lawyers' Manual on Prof. Conduct [1991-95] 1001:3620 (1995).

**Rules Cited:**

**1.71.9**