

## Utah Ethics Opinions

1976.

32. USB EAOB Opinion No. 32

Utah State Bar

Ethics Advisory Opinion No. 32

Approved December 10, 1976

**Summary:** An attorney may not allow his name to be placed on a list circulated to members of a nonprofit association organized for the purpose of providing legal services and may not associate with California firms for that purpose.

**Comment:** See *In re Utah State Bar Petition* 647 P.2d 901 (1982).

**Facts:** You have inquired as to the ethical propriety of associating with Murphy and West, a California based law firm organized for the purpose of providing legal services to individual members of nonprofit groups. The concept formulated by Murphy and West is that an "umbrella" law firm with individual attorneys or firms continuing to be independent of Murphy and West, but who handle Murphy and West generated matters either in their area of expertise or in their geographic area of California.

The firm now proposes to expand beyond California. In effect, what is contemplated is that you will allow your name to be put on a list of attorneys who will accept cases from persons belonging to the various nonprofit groups serviced by Murphy and West, but which members are located in Utah.

These persons will contact you directly from the list, and will make payment direct to you. They will not have contacted Murphy and West, except as Murphy and West provide your name to the nonprofit organization which, in turn, lists your name on the list it provides to its members.

At the present time, all fees generated from these cases will be retained by you, although ultimately you may be asked to remit a portion of the fee to handle administrative headquarters costs.

The California Bar did not embrace the Code of Professional Responsibility promulgated by the American Bar Association in its advisory capacity, but elected to make substantial modifications thereof, particularly in Canon 2, dealing with publicity in general. The California ethics rule relaxes substantially that which may be done by

lawyers within that state in the area of group legal services and advertising of legal services.

**Opinion:** The Utah State Bar with the approval of the Utah Supreme Court adopted the American Bar Association Code of Professional Responsibility which are somewhat more restrictive.

Canon 2, DR 2-103(C) and (D) provide:

(C) A lawyer shall not request a person or organization to recommend employment, as a private practitioner, of himself, his partner, or associate, except that he may request referrals from a lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar in the geographical area in which the association exists and may pay its fees incident thereto . . .

(D) A lawyer shall not knowingly assist a person or organization that recommends, furnishes, or pays for legal services to promote the use of his services or those of his partners or associates. However, he may cooperate in a dignified manner with the legal service activities of any of the following, provided that his independent professional judgment is exercised in behalf of his client without interference or control by any organization or other person:

- (1) Legal aid office or public defender office:
  - (a) Operated or sponsored by a duly accredited law school.
  - (b) Operated or sponsored by a bona fide non-profit community organization.
  - (c) Operated or sponsored by a governmental agency.
  - (d) Operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists.
- (2) A military legal assistance office.
  - (3) A lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists.
  - (4) A bar association representative of the general bar of the geographical area in which the association exists.
  - (5) Any other non-profit organization that recommends, furnishes or pays for legal services to its members or beneficiaries, but only in those instances and to the extent that controlling constitutional interpretation at the time of the rendition of services requires the allowance of such legal service activities, and only if the following conditions,

unless prohibited by such interpretation, are met:

(a) The primary purposes of such organization do not include the rendition of legal services.

(b) The recommending, furnishing, or paying for legal services to its members is incidental and reasonably related to the primary purposes of such organization.

(c) Such organization does not derive a financial benefit from the rendition of legal services by the lawyer.

(d) The member or beneficiary for whom the legal services are rendered, and not such organization, is recognized as the client of the lawyer in that matter."

It is clear that the proposal as made falls into none of the categories excepted under DR 2-103(D).

The proposal, as made, calls for the nonprofit organization to publicize the names of attorneys who will accept these cases. The organization member then contacts the attorney and pays the attorney directly. In other words, it is in effect a law list provided by Murphy and West on which an attorney allows his name to be listed. The effect is a thinly veiled system allowing a limited number of lawyers to solicit within the nonprofit organization.

In other words, an unapproved consumer law list. As such, it would fall under the interdiction of DR 2-102(A)(6) of the Code of Professional Responsibility as adopted and approved in Utah, which reads as follows:

DR 2-102 Professional Notices, Letterheads, Offices, and Law Lists.

(A) A lawyer or law firm shall not use professional cards, professional announcement cards, office signs, letterheads, telephone directory listings, law lists, legal directory listings, or similar professional notices, or devices, except that the following may be used if they are in dignified form:

...

(6) A listing in a reputable law list or legal directory giving brief biographical and other informative data. A law list or directory is not reputable if its management or contents are likely to be misleading or injurious to the public or to the profession. A law list is conclusively established to be reputable if it is certified by the American Bar Association as being in compliance with its rules and standards. The published data may include only the following: name, including name of law firm and names of professional associates; addresses and telephone numbers; one or more fields of law in which the lawyer or law firm concentrates; a statement that practice is limited to one or more fields of law, a statement that the lawyer or law firm specializes in a

particular field of law or law practice but only if authorized under DR 2-105 (A)(4); date and place of birth; date and place of admission to the bar of state and federal courts; schools attended, with dates of graduation, degrees, and other scholastic distinctions; public or quasi-public offices; military service; posts of honor; legal authorships; legal teaching positions; memberships, offices, committee assignments, and section memberships in bar associations; memberships and offices in legal fraternities and legal societies; technical and professional licenses; memberships in scientific, technical and professional associations and societies; foreign language ability; names and addresses of references, and, with consent, names of clients regularly represented."

The system cannot be approved within the framework of the Code of Professional Responsibility as adopted by the Utah State Bar with the approval of the Supreme Court.

As previously indicated, the California Bar adopted a substantially different rule than Canon 2, and particularly DR 2-102 and DR 2-103.

We conclude that it is not ethically possible for a Utah attorney to affiliate with Murphy and West, under the proposal furnished to us, under the present Code of Professional Responsibility in effect in Utah.

Rule Cited:

Canon 2