

Utah Ethics Opinions

1979.

70. USB EAOE Opinion No. 70

Utah State Bar

Ethics Advisory Opinion No. 70

Approved November 16, 1979

Summary: An attorney referral program for the Utah Education Association is permissible under certain circumstances.

Facts: The Ethics Committee has been asked to comment on the terms of a proposed attorney referral program to be established for an education association within Utah. Said terms are contained in a written "Attorney Referral Program," hereinafter referred to as the "program" and an "Agreement," to be executed by each participating attorney and the association. The agreement provides that the attorney will abide by the terms of the program. The program provides in part, the following:

1. Defines those eligible to participate in the program.
2. Defines the types of legal services available under the program, excluding some specific types.
3. States that legal fees will be approved by the association and must be at least thirty percent less than the participating attorneys' regular rates except for expenses, costs and court awarded fees.
4. The client must pay the attorney directly, and the association will have no responsibility for payment of fees.
5. The association will provide eligible members with a list of names, addresses and phone numbers of participating attorneys. A participating attorney will be available during weekends or evenings or other times to accommodate working schedules.
6. The attorney-client relationship will not be infringed upon by the association and the participating attorney will exercise independent professional judgment on behalf of each client.
7. A participating attorney may decline to represent a particular client if there is a conflict of interest or other ethical problem, but will assist the client in obtaining other counsel in accordance with the terms of the program.

8. Members are not obligated to retain participating attorneys.

9. Attorneys will maintain malpractice insurance and hold the association harmless.

10. If disputes arise between a participating attorney and association client, a grievance may be filed with the association and binding arbitration may be requested.

11. Procedures are set for termination or renewal of attorney agreements.

12. Participating attorneys will be evaluated by clients at the conclusion of the services and evaluations will be submitted to the association.

Opinion: Canon 2, DR 2-103 addresses the problems inherent in the Program, particularly in DR 2-103(C)(2)(a) and (b) and (D)(4)(e) through (g).

(C)(2) He may cooperate with the legal service activities of any of the officer or organizations enumerated in DR 2-103(A)(I) through (4) and may perform legal services for those to whom he was recommended by it to do such work if;

(a) The person to whom the recommendation is made is a member or beneficiary of such office or organization; and

(b) The lawyer remains free to exercise his independent professional judgment on behalf of his client.

(D) A lawyer or his partner or associate or any other lawyer affiliated with him or his law firm may be recommended, employed or paid by, may cooperate with, one of the following offices or organizations that promote the use of his services or those of his partner or associate or any other lawyer affiliated with him or his firm if there is not interference with the exercise of independent professional judgment in behalf of his client:

...

(4) Any bona fide organization that recommends, furnishes, or pays for legal services to its member or beneficiaries provided the following conditions are satisfied:

(a) Such organization, including any affiliate, is so organized and operated that no profits derived by it from the rendition of legal services by lawyers, and that, if the organization is organized for profit, the legal services are not rendered by lawyers employed, directed, supervised or selected by it except in connection with matters where such

organization bears ultimate liability of its members of beneficiary.

(b) Neither the lawyer, nor his partner, nor associate, nor any other lawyer affiliated with him or his firm, nor any non-lawyer, shall have initiated or promoted such organization for the primary purpose of providing financial or other benefit to such lawyer, partner, associate or affiliated lawyer.

(c) Such organization is not operated for the purpose of procuring legal work or financial benefit for any lawyer as a private practitioner outside of the legal services program or the organization.

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

(e) Any member or beneficiary who is entitled to have legal services furnished or paid for by the organization may, if such member or beneficiary so desires, select counsel other than that furnished, selected or approved by the organization for the particular matter involved; and the legal service plan of such organization provides appropriate relief for any member or beneficiary who asserts a claim that representation by counsel furnished, selected or approved would be unethical, improper or inadequate under the circumstances of the matter involved and the plan provides an appropriate procedure for seeking such relief.

(f) The lawyer does not know or have cause to know that such organization is in violation of applicable laws, rules of court and other legal requirements that govern its legal service operation.

(g) Such organization has filed with the appropriate disciplinary authority at least annually a report with respect to its legal service plan, if any, showing its terms, its schedule of benefits, its subscriptions charges, agreements with counsel, and financial results of its legal activities or, if it has failed to do so, the lawyer does not know or have cause to know of such failure.

ABA Formal Opinion 332 (1973) discussed prepaid legal services plans with an "open panel" of lawyers participating. Such a plan provided that the clients had a choice of attorneys. The Committee found that such a plan was permissible so long as the attorney was free to exercise independent professional judgment on behalf of clients. The companion Formal Opinion 333 (1973) considered a similar plan with two options: 1. Only one attorney would be available to provide services furnished under the plan; or 2. The client would be free to choose from a panel of attorneys. The Committee found that the closed panel plan was permissible.

In ABA Informal Opinion 1352 (1975) a lay consumer protection group sought to refer citizens to specified lawyers competent in consumer law and willing to charge affordable fees. The ABA committee found that if the organization were non-profit, such referrals would not violate DR 2-103(C).

A non-profit organization, Volunteer Lawyers for the Arts, Inc., was allowed in Informal Opinion 1360 (1976) to publicly recommend services of certain volunteer lawyers through a lawyer referral plan to needy artists.

A program comparable to that proposed herein was most recently discussed in ABA Informal Opinion 1388 (1977). A nationwide affiliation of lawyers was formed with the purpose of providing group legal services to members of various organizations. The organization would compile a nationwide list of lawyers willing to participate in the program and the list of lawyers would be given to organizations who would then notify their members in simple, dignified announcements of the availability of lawyers in their geographical area participating in the plan. The notification would indicate areas of practice or general practice. Members participating would communicate directly with the lawyers and fees would be paid directly to the lawyers. The affiliation would receive none of those fees. However, participating lawyers might be required to contribute to the operating expenses of the affiliation. The Committee found that his was a bona fide legal services program with the members having freedom to select their own lawyers from an open panel. The attorneys were not obligated to accept any one member as a client. The Committee warned that the announcement should not indicate specialties unless such were certified by the appropriate state agency. The Committee approved the plan with the caveat that the rules of the state where the plan originated would have to be adhered to as regards report for group legal services. This might include periodic compliance reports as is contained in our rule in Canon 2, DR 2-103(D)(4)(g).

There is one provision of the program which causes the Committee some concern. That is the requirement that if an attorney cannot accept a client because of a conflict of interest or other ethical problem, that he assist the client in obtaining other counsel under program parameters. The Committee feels that this would not be proper and the client should be referred back to the association for reference to other counsel. If that one item is changed, it appears to the Committee that the program meets the requirements of Canon 2 so long as the association complies with DR 2-103(D)(4)(g) and submits annual reports to the bar concerning operation of the program.

Rule Cited:

Canon 2