

Advisory Opinion 1987-7

Factual Situation:

The American Lawyer Referral Service, Inc. is a Florida Corporation. It offers legal referral services to the general public by advertising in the yellow pages of various telephone directories, in newspapers and on television. It utilizes Martindale-Hubbel and other law directories to make referrals to lawyers or law firms evidencing an expertise in the field of law that best suits the request. Evidently such referrals are made on a nationwide basis. It charges an "advertising fee" to the lawyer or law firm for each referral that retains his or its services. The person requesting the referral is not charged any type of fee. It is the Committee's understanding that The American Lawyer Referral Service, Inc. is a private, for-profit referral service and that it is not sponsored or approved by the State Bar of New Mexico or any other recognized New Mexico bar association.

Question Presented:

Can an attorney licensed to practice law in New Mexico utilize the referral services of the American Lawyer Referral Service, Inc.?

Answer:

It is a violation of both the old and new Codes of Professional Responsibility for an attorney to pay a fee to a legal entity such as The American Lawyer Referral Service, Inc. for a referral.

Discussion:

Rule 2-103 of the former New Mexico Code of Professional Responsibility provided:

(B) Except as permitted under Rule 2-103(C), a lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client, or as a reward for having made a recommendation resulting in his employment by a client, except that he may pay the usual and reasonable fees or dues charged by any of the organizations listed in Rule 2-103(D).

(C) A lawyer shall not request a person or organization to recommend or promote the use of his services or those of his partner or associate, or any other lawyer affiliated with him or his firm, as a private practitioner, except as authorized in Rule 2-101, and except that:

(1) He may request referrals from a lawyer referral service operated, sponsored or approved by a bar association; and may pay its fees incident thereto;

(2) He may cooperate with the legal service activities of any of the offices or organizations enumerated in Rule 2-103(D)(1) 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 firm may be recommended, employed or paid by, or 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 no interference with the exercise of independent professional judgment in behalf of his client:

(1) A 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 nonprofit community organization;
 - (c) operated or sponsored by a governmental agency;
 - (d) operated, sponsored or approved by a bar association;
- (2) A military legal assistance office;
- (3) A lawyer referral service operated, sponsored or approved by a bar association;
- (4) Any bona fide organization that recommends, furnishes or pays for legal services to its members or beneficiaries :

Since The American Lawyer Referral Service, Inc. does not fall within any of the categories specified in Rule 2-103(D), it would be a violation of the former New Mexico Code of Professional Responsibility for any attorney licensed to practice law in New Mexico to utilize its services. Such a lawyer is specifically precluded from compensating or giving anything of value to any unapproved person or organization to recommend or secure his employment by a client. Since an attorney or law firm pays an unspecified fee for any referral which retains his or its services, it appears a clear violation of the Rule.

The Advisory Opinions Committee addressed a similar request in Advisory opinion 1983-1. In that opinion, it concluded that an attorney would violate Rule 2-103 by utilizing the services of the National Legal Referral Service. The National Legal Referral Service was a private referral service not approved by the State Bar of New Mexico. It charged an initial fee to its lawyer, members for organizational costs, advertising and production and also assessed its lawyer members periodic, fixed charged for advertising referrals which were not directly or indirectly determined by the amount of referrals or the clients which the lawyer received. The Advisory opinions Committee stated that a lawyer would violate Rule 2-103 by utilizing its services since the National Legal Referral Service was not operated, sponsored or approved by the State Bar of New Mexico. A like rationale applies to The American Lawyer Referral Service, Inc.

Effective January 1, 1987, the New Mexico Supreme Court adopted a New Code of Professional Responsibility. Rule 16-702 of that Code provides:

- (a) Subject to the requirements of Rule 16-701, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor, radio or television, or through written communication not involving personal solicitation.
- (c) 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 cost of the advertising or the reasonable cost of preparing the communication which is permitted by this rule and may pay the usual charges for a not-for-profit lawyer referral service or other legal service organization.

Since The American Lawyer Referral Service, Inc. is not providing advertising or communication services for any specific attorney and does not appear to be a not-for-profit lawyer referral service," it would be a violation of Rule 16-702 for an attorney licensed to practice law in New Mexico to utilize its services.