

Nebraska Ethics Advisory Opinion for Lawyers  
No. 79-4

IT IS IMPROPER FOR A LAWYER TO BELONG TO A LAWYER REFERRAL SERVICE, CONDUCTED BY LAYMEN, WHICH REFERS CLIENTS TO LAWYERS ON A "TRADE OF SERVICES" BASIS, SOLELY ON THE BASIS OF FEE, AND FOR WHICH THE LAWYER MUST SPLIT THE FEE WITH A LAYMAN.

FACTS

A layman has set up a customer or client referral service based solely upon the exchange of services or goods. When you belong to the service, called a "Trade Exchange", another person also belonging to the trade exchange may come to you for services or goods and you then do not receive a fee from that particular person but instead take out your fee in services or goods from the other members of the trade exchange. The particular layman setting the plan up operates as a referring agency and coordinates the exchanges. The trade exchange actively solicits lawyers to belong to it and participate in its services. The fee paid to the trade exchange is an initial membership fee of \$125.00 and then a percentage to be paid by the participants, in this case the lawyer, based on the amount of business referred to the lawyer by the trade exchange. Up to \$2,000.00 worth of services requires 5 percent yearly fee to be paid to the trade exchange. The percentage reduces to one percent on referrals of \$35,000.00 or more. In addition, the trade exchange receives a trade commission of five percent cash per month from each participant as a handling fee for coordination of the services.

DISCUSSION

In the committee's opinion, this referral service violates Canons 2 and 3 of the Code of Professional Responsibility. Ethical Consideration 2-8 specifically states that in order for a referral to be in the best

interest of the client, it must be "disinterested and informed":

"Selection of a lawyer by a layman often is the result of the advice and recommendation of third parties-relatives, friends, acquaintances, business associates or other lawyers. A layman is best served if the recommendation is disinterested and informed.

A lawyer should not compensate another person for recommending him, for influencing a prospective client to employ him, or to encourage future recommendations." (Emphasis added)

In a sense, the referral service is a "runner" for lawyer, which is specifically prohibited. See Formal Opinion of the American Bar Association Committee on Professional Ethics. See, also, Formal Opinion 294 and Disciplinary Rule 2-103(D). As stated in previous Canon 35:

"The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between clients and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client."

In addition use of the referral agency violates Canon 3 of the Code of Professional Responsibility in that it attempts to divide legal fees with a layman. As stated in Ethical Consideration 3-8:

"Since a lawyer should not aid or encourage a layman to practice law, he should not practice law in association with a layman or otherwise share legal fees with a layman."

(Emphasis Added)

Such a division of fees with a layman has been specifically condemned by the American Bar Association Committee on Professional Ethics in Formal Opinions 180 and 294.

The proposed trade exchange is an improper referral agency, prohibited by the Code of Professional Responsibility, and permits an improper division of legal fees.

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