

Nebraska Ethics Advisory Opinion for Lawyers
No. 83-4

A LAWYER MAY PARTICIPATE IN A LAWYER REFERRAL SERVICE AND PAY THE USUAL CHARGES OF SUCH A SERVICE; PROVIDED, THE SERVICE IS A NOT-FOR-PROFIT LAWYER REFERRAL SERVICE.

FACTS

A private lawyer referral service has advertised that it has assembled a panel of lawyers to whom potential clients will be referred. The proprietor of the referral service proposes to charge a substantial fee to any lawyer included in the panel of lawyers to whom potential clients will be referred. A lawyer wishes to know whether it is proper to pay the proposed fee to the proprietor of the referral service, so that prospective clients will be referred to him.

DISCUSSION

Lawyer referral services, operated by bar associations, have been part of the American legal system for many years. The propriety of such referral services was recognized in the Code of Professional Responsibility adopted by the Supreme Court of Nebraska in 1975. DR 2-103 of that Code provided that a lawyer could properly participate in a lawyer referral service operated, sponsored or approved by a bar association. As amended in 1977, the Code of Professional Responsibility contained a similar provision. DR 2-103(C).

The Code of Professional Responsibility was recently amended again, and DR 2-103 of the Code now reads as follows:

Recommendation of Professional
Employment.

(A) 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 advertising or written communication permitted by these rules and may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.

(B) A lawyer shall not compensate or give anything of value to representatives of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item.

The revised wording of DR 2-103(A) permits lawyers to participate in not-for-profit lawyer referral services. This wording is obviously broader than the previous rule, which extended only to lawyer referral services operated, sponsored or approved by bar associations. The present rule still permits lawyers to participate in referral services operated by bar associations, but it also permits participation in other not-for-profit referral services.

The language now found in DR 2-103(A) was apparently taken from the Model Code of Professional Responsibility, recently adopted by the House of Delegates of the American Bar Association. The drafters of the Model Code made the following comment relative to lawyer referral services:

Paying Others to Recommend a Lawyer.

A lawyer is allowed to pay for advertising permitted by this Rule, but otherwise is not permitted to pay another person for channeling professional work. This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices.

Likewise, a lawyer may participate in not-for-profit lawyer referral programs and pay the usual fees charged by such programs. Paragraph (c) [DR 2-103(A)] does not prohibit paying regular compensation to an assistant, such as a secretary, to prepare communications permitted by this Rule.

In connection with the inquiry submitted to the Committee, it is apparent that the propriety of a lawyer's participation in the proposed lawyer referral service depends on whether it is a not-for-profit service. The information submitted to the Committee does not conclusively establish whether the proposed referral service is operated for profit. None of the information submitted indicates that a not-for referral service is contemplated.

CONCLUSION

Under the rules presently in force, a lawyer may participate in a not-for-profit lawyer referral service. In the absence of information indicating whether a proposed referral service is operated for profit, the Committee cannot give its approval to a lawyer's participation in the referral service. Any lawyer wishing to participate in a lawyer referral service is advised to determine whether a not-for-profit service is involved or contemplated.