

Nebraska Ethics Advisory Opinion for Lawyers  
No. 94-2

NON-LAWYERS MAY NOT, THROUGH A "900" NUMBER TELEPHONE SERVICE, PROVIDE LEGAL ADVICE TO THE PUBLIC. ATTORNEYS ENCOURAGING SUCH AN ENTERPRISE WOULD BE IN VIOLATION OF DR 3-101, WHICH PROHIBITS A LAWYER FROM AIDING A NONLAWYER IN THE PRACTICE OF LAW

FACTS

A law firm wishes to establish a pay-per-call "900" number telephone department under the following proposal to be staffed by law students:

"PROPOSAL

This is a proposal to add a pay per call telephone department to the firm. The department will be managed by myself and will employ law students to answer calls from the public. The following paragraphs provide an overview of how the department will operate.

Operation

A telephone marketing department will be added to the firm. This department will run a pay per call service that answers calls from the public. The service will be staffed by law clerks. The goal of the service is not to provide specific legal advice, but to provide the caller with information necessary for them to decide whether or not legal action is their best alternative.

For example, if the caller describes a problem with their new automobile, then the clerk may suggest contacting the dealer or factory representative in an attempt to resolve the problem amicably. The clerk will inform the caller that a lemon law may be applicable and legal action might be a viable option. If the caller wants a legal opinion,

then the service will have a firm attorney contact them.

The service will assist the caller in understanding their alternatives. For example, if the issue involves a small amount of money, then small claims court might be recommended as the most cost effective alternative.

There will be a fee collected by offering the service through a 900 telephone number. For example, at a cost of \$1.00 for the first minute and \$.50 for each minute thereafter. At this rate, a ten minute call would cost the caller \$5.50. The service will provide a very cost efficient method for the caller to assess their options and what actions might be appropriate.

Clerks working for the service will be paid hourly. Along with their phone department responsibilities, the clerks will provide typical clerking services. The clerk directing the phone service will receive incentive bonuses based on the amount of total net revenues generated by the service."

#### QUESTIONS PRESENTED

- (1) Does the proposed constitute the provision of legal advice by a non-lawyer to the public which constitutes the practice of law?
- (2) Is it permissible for a non-lawyer to provide legal advice to the public?
- (3) Is it permissible for a lawyer to aid a non-lawyer in the unauthorized practice of law?
- (4) Is it permissible for a non-lawyer to receive a portion of the fees collected for legal services provided by non-lawyers as well as lawyers?
- (5) It is permissible for a non-lawyer to receive financial incentives and bonuses based upon revenue generated when he supervises law students who are

giving legal advice for a fee and who are soliciting clients for attorneys for the firm which employs them?

## DISCUSSION

Non-lawyers may not practice law in the State of Nebraska. The Revised Rules of the Supreme Court/Court of Appeals of the State of Nebraska clearly provide that in order to be authorized to practice law in the state, an applicant must have passed the Nebraska State Bar Examination, an equivalent examination, the bar examination of another state, or have been licensed to practice law in another state. See Neb. Rules of Court, Rules of Admission 1-15.

Additionally, Neb. Rev. Stat. § 7-101 (Reissue 1991) provides, in relevant part:

[N]o person shall practice as an attorney or counselor at law, or commence, conduct or defend any action or proceeding to which he is not a party. . . . unless he has been previously admitted to the bar by order of the Supreme Court of this state. \* \* \* Any person who shall violate any of the provisions of this section shall be guilty of a Class III misdemeanor. . . .

While Neb. Rev. Stat. § 7.101.01 (Reissue 1991) does provide for limited practice by senior law students, pursuant to "Rule of Legal Practice by Approved Senior Students" at Rules of Practice and Procedure, Page 16.1 promulgated by the Nebraska Supreme Court, the proposal does not fit within that framework.

Black's Law Dictionary defines the practice of law as "[t]he rendition of services requiring the knowledge and the application of legal principles and techniques to serve the interests of another with his consent. \* \* \* It embraces all advice to clients and all actions taken for them in matters connected with the law." Black's Law Dictionary 1055 (5th ed. 1979).

Such a definition is in accord with the Nebraska

Supreme Court which, in reference to § 7-101, has held that the giving of advice to persons as to their legal rights constitutes practicing law. See *State ex rel. Hunter v. Kirk*, 133 Neb. 625, 276 N.W.2d 380 (1937). The Supreme Court has also held that one may be guilty of the practice of law without a license notwithstanding that he receives no fee for the service performed. *State v. Barlow*, 131 Neb. 294, 268 N.W. 95 (1936).

It is clear from the facts set out above that the giving of advice to callers as to their legal rights and actions appropriate thereto would constitute practicing law. As the law students manning the telephone lines would not, by definition, be members of the Nebraska State Bar Association or have passed the bar of any other state which would qualify them to practice law in Nebraska, such conduct would not only be prohibited by the Rules of the Nebraska Supreme Court and the Nebraska Court of Appeals, but would be punishable criminally.

Furthermore, Disciplinary Rule 3-101 provides, in relevant part:

(A) A lawyer shall not aid a non-lawyer in the unauthorized practice of law.

In conjunction with Rule 3-101, EC 3-1 sheds additional light on the subject:

The prohibition against the practice of law by a layman is grounded in the need of the public for integrity and competence of those who undertake to render legal services'. Because of the fiduciary and personal character of the lawyer-client relationship and the inherently complex nature of our legal system, the public can better be assured of the requisite responsibility and competence if the practice of law is confined to those who are subject to the requirements and regulations imposed upon members of the legal profession.

Not only would law students therefore be precluded

from practicing law under the auspices of the proposed "900" phone services, but the attorneys assisting and encouraging such practice would be in violation of the standards of the Code of Professional Responsibility.

#### CONCLUSION

As the findings set out above go to the nucleus of the proposed enterprise, it is not necessary for this Committee to discuss the other questionable facets of such a venture. Law students are not qualified to dispense legal advice to the public as they would be acting in the capacity of lawyers without being members of the bar. Moreover, a law firm hiring law students for that purpose would be encouraging this unethical and illegal practice and be in violation of the Code of Professional Responsibility itself.

Suffice it to say that an endeavor of this nature would also raise substantial questions concerning solicitation, confidentiality, and conflicts of interest.