

Nebraska Ethics Advisory Opinion for Lawyers
No. 95-3

PURSUANT TO DR 2-103 (A), AN ATTORNEY MAY NOT PAY TO PARTICIPATE IN A "FOR-PROFIT" LAWYER REFERRAL PROGRAM WHICH PROVIDES A SERVICE DIRECTORY TO INTERNET USERS AT ON-LINE SHOPPING MALLS.

STATEMENT OF FACTS

An attorney requests an opinion concerning the ethical propriety of participating in a "for-profit" lawyer referral program. The referral program is a service directory created specifically to provide internet users access to legal representation and services worldwide. Corporations and individuals can locate the referral program at on-line shopping malls. Once accessed, the instructions guide the possible client to the geographic location and the area of law where legal representation is needed. This eventually leads to the identity of participating lawyers who have provided the referral program with a profile sheet containing general education, background, specialties, board certifications, foreign languages, fee policies, etc. A fee ranging from \$375.00 to \$950.00 per six month period is paid by participating lawyers. The referral program will limit the number of attorneys listed in any particular location on each of approximately 30 subject matter specialties.

DISCUSSION

The issue of a lawyer's participation in a "for-profit" referral program has been addressed in [Opinion No. 89-3](#) as well as in a letter opinion of October 25, 1993. DR 2-103 (A) is directly on point and provides as follows:

DR 2-103 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.

This language concerning the exception of paying for "advertising or written communication" was explained in [Opinion No. 89-3](#). In the referral system examined as a part of that opinion, the payments made by the participating lawyer to the referral system were called and referred to as a share of the total advertising and promotional expenses incurred by the referral system, plus a reasonable fee for the administration of the referral system's advertising program. In that opinion, this Committee said:

The provisions of DR 2-103 (A) clearly allow a lawyer to pay for advertising or written communications generated by the lawyer ("self-advertising"). It is also clear that a lawyer may pay the "usual charges" of a not-for-profit lawyer referral service or other legal service organization. It is the opinion of the Committee, however, that paying a second party for the second party's advertising and promotional expenses, plus an administration fee, falls squarely within the prohibition against giving "anything of value to a person for recommending the lawyer's services" and does not fall within the exception for advertising expenses.

The referral system examined in the opinion of October 25, 1993 involved a commercial venture in which a television advertising promoter invited any television viewer in need of legal assistance to call in on a 1-800 telephone number given in the commercial. The caller would then be given the name and telephone number of a participating lawyer on a rotational basis. In return for the payment in excess of \$5,000.00, the promoter would guarantee that the participating lawyer would receive 75 responses. If fewer than 75, a partial

reimbursement would be made, and if more than 75, an additional fee would be charged. Although it is apparent that at least a portion of the payment made by the participating lawyer to the promoter were for the television advertising, this Committee said:

Under the reasoning set forth in [Opinion No. 89-3](#), the Committee is of the opinion that your participation in this service, under the terms set forth in the "cooperative advertising agreement" would violate DR 2-103.

CONCLUSION

Pursuant to DR 2-103 (A), an attorney may not pay to participate in a "for-profit" lawyer referral program which provides a service directory to internet users at on-line shopping malls.

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