

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 2000-5

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[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

SYLLABUS: If an online lawyer referral service is in compliance with the DR 2-103 of the Ohio Code of Professional Responsibility and with the Lawyer Referral and Information Services Regulations, an attorney may pay the lawyer referral service a membership or registration fee as well as a fee calculated on a percentage of the legal fee earned. DR 2-103(C)(2)(a), DR 2-103(C)(1)(c), DR 2-103(B), and DR 3-102(A)(4) expressly permit both the payment of a membership or registration fee to a lawyer referral service as well as a fee calculated on a percentage of the legal fee earned. Before participating in a lawyer referral service, an Ohio attorney should determine whether the referral service meets the requirements of DR 2-103(C)(1)(a) through (j) and complies with the Lawyer Referral and Information Services Regulations.

Whether it is proper for an Ohio attorney to enter a referral agreement with an out-of-state law firm operating an online referral service on the World Wide Web depends upon whether the lawyer referral service is in compliance with DR 2-103(C) of the Ohio Code of Professional Responsibility and with the Lawyer Referral and Information Services Regulations.

OPINION: This opinion addresses two questions regarding attorney participation in online attorney referral services.

1. Is it proper for an Ohio attorney to participate in an online lawyer referral service that requires the attorney to pay the service a percentage of legal fees earned from the clients referred?
2. Is it proper for an Ohio attorney to participate as a “referral affiliate attorney” for an out-of-state law firm operating an online referral service on the World Wide Web?

Question One

Is it proper for an Ohio attorney to participate in an online lawyer referral service that requires the attorney to pay the service a percentage of legal fees earned from the clients referred?

In Ohio, lawyers are expressly permitted under DR 2-103(D)(3) of the Ohio Code of Professional Responsibility to participate in a lawyer referral service that complies with DR 2-103(C). An online lawyer referral service, like any other lawyer referral service, must comply with the requirements of the rule.

DR 2-103(C)(1) (a) to (j) lists the mandatory requirements that a lawyer referral service must meet in order for an attorney to ethically participate.

DR 2-103(C) A lawyer shall not request a person or organization to recommend or promote the use of the lawyer's services or those of the lawyer's partner or associate, or any other lawyer affiliated with the lawyer's firm, as a private practitioner, except that:

- (1) The lawyer may request referrals from a lawyer referral service that refers the lawyer to prospective clients but only if the lawyer referral service conforms to all of the following:
 - (a) Operates in the public interest for the purpose of referring prospective clients to lawyers, pro bono and public service programs, and government, consumer, or other agencies who can provide the assistance the clients need in light of their financial circumstance, spoken language, any disability, geographical convenience, and the nature and complexity of their problem;
 - (b) Calls itself a lawyer referral service or a lawyer referral and information service;
 - (c) Is open to all lawyers who are licensed and admitted to the practice of law in Ohio who maintain an office in the geographical area to be served by the service and who meet reasonable, objectively determined experience requirements established by the service; pay the reasonable registration and membership fees established by the service; and maintain in force a policy of errors and omissions insurance in an amount established by the service.
 - (d) Establishes rules that prohibit lawyer members of the service from charging prospective clients to whom a client is referred, fees and or costs that exceed charges the client would have incurred had no lawyer referral service been involved;
 - (e) Establishes procedures to survey periodically clients referred to determine client satisfaction with its operations and to investigate and take appropriate action with respect to client complaints against lawyer members of the service, and the service and its employees;

- (f) Establishes procedures for admitting, suspending, or removing lawyers from its roll of panelists and promulgates rules that prohibit the making of a fee generating referral to any lawyer who has an ownership interest in, or who operates or is employed by the lawyer referral service, or who is associated with a law firm that has an ownership interest in, or operates or is employed by the lawyer referral service;
- (g) Establishes subject-matter panels, eligibility for which shall be determined on the basis of experience and other substantial objectively determinable criteria;
- (h) Does not, as a condition of participation in the referral service, limit the lawyer's selection of co-counsel to other lawyers listed with the referral service;
- (i) Does not make a fee-generating referral to any lawyer who has an ownership interest in or who operates or is employed by the lawyer referral service or who is associated with a law firm that has an ownership interest in or operates or is employed by a lawyer referral service.
- (j) Reports regularly to the Supreme Court Committee for Lawyer Referral and Information Services and complies with the record-keeping requirements of and regulations adopted by the Committee.

The DR 2-103(C)(1)(j) requirement refers to the Supreme Court Committee for Lawyer Referral and Information Services (LRIS). That committee was created under Gov. Bar R. XVI §1(A) and (B) "for the purpose of adopting regulations for the operation of lawyer referral services and ensuring compliance of lawyer referral services with the provisions of DR 2-103." The LRIS regulations are published in Appendix VII of the Supreme Court Rules for the Government of the Bar. Under LRIS Reg 400(C), a lawyer referral service must register with the Supreme Court Lawyer Referral and Information Services Committee ninety days before beginning operation. Under LRIS Reg 300, a lawyer referral service must file an annual report with the secretary of the Committee. Under LRIS Reg 400, a lawyer referral service must comply with other additional requirements [requirements in addition to DR 2-103] for the operation of a lawyer referral service.

DR 2-103(C)(2)(a), DR 2-103(C)(1)(c), DR 2-103(B), and DR 3-102(A)(4) permit a lawyer participating in a referral service to pay a membership or registration fee, as well as a fee calculated as a percentage of legal fees earned.

DR 2-103(C)(2) A lawyer participating in a lawyer referral service that meets the requirements of divisions (C)(1)(a) to (j) of this rule may:

- (a) **Be required, in addition to payment of a membership or registration fee as provided in division (C)(1)(c) of this rule, to pay a fee calculated as a percentage of legal fees earned by any lawyer panelist to whom the lawyer referral service has referred a matter.** The income from the percentage fee shall be used only to pay the reasonable operating expenses of the service and to fund public service activities of the service or its sponsoring organization, including the delivery of pro bono public services; (Emphasis added).
- (b) As a condition of participation in the service, be required to submit any fee disputes with a referred client to mandatory fee arbitration;
- (c) Participate in moderate and no-fee panels and other special panels established by the service that respond to the referral needs of the consumer public, eligibility for which shall be determined on the basis of experience and other substantial objectively determinable criteria.

DR 2-103(C)(1) The lawyer may request referrals from a lawyer referral service that refers the lawyer to prospective clients but only if the lawyer referral service conforms to all of the following:

- (c) Is open to all lawyers who are licensed and admitted to the practice of law in Ohio who maintain an office in the geographical area to be served by the service and who meet reasonable, objectively determined experience requirements established by the service; **pay the reasonable registration and membership fees established by the service;** and maintain in force a policy of errors and omissions insurance in an amount established by the service; (Emphasis added).

DR 2-103(B) A lawyer shall not compensate or give any thing of value to a person or organization to recommend or secure the lawyer's employment by a client, or as a reward for having made a recommendation resulting in the lawyer's employment by a client, **except that the lawyer may pay the usual and reasonable fees or dues charged by any of the organizations listed in DR 2-103(D).** [DR 2-103(D)(3) lists "A lawyer referral service that complies with division (C) of this rule."]. (Emphasis added).

DR 3-102(A) A lawyer or law firm shall not share legal fees with a non-lawyer except that:

- (4) A lawyer participating in a lawyer referral service that satisfies the requirements of DR 2-103(C) **may pay to the service a fee calculated as a percentage of legal fees earned by the lawyer in**

his or her capacity as a lawyer to whom the service has referred a matter. This percentage fee is in addition to any reasonable membership or registration fee established by the service. (Emphasis added).

Based on these rules, it is unequivocal that if a lawyer referral service is in compliance with the rules and regulations, an attorney may pay the lawyer referral service a membership or registration fee as well as a fee calculated on a percentage of the legal fee earned.

Thus, this Board advises that if an online lawyer referral service is in compliance with the DR 2-103 of the Ohio Code of Professional Responsibility and with the Lawyer Referral and Information Services Regulations, an attorney may pay the lawyer referral service a membership or registration fee as well as a fee calculated on a percentage of the legal fee earned. DR 2-103(C)(2)(a), DR 2-103(C)(1)(c), DR 2-103(B), and DR 3-102(A)(4) expressly permit both the payment of a membership or registration fee to a lawyer referral service as well as a fee calculated on a percentage of the legal fee earned. Before participating in a lawyer referral service, an Ohio attorney should determine whether the referral service meets the requirements of DR 2-103(C)(1)(a) through (j) and complies with the Lawyer Referral and Information Services Regulations.

Question Two

Is it proper for an Ohio attorney to participate as a “referral affiliate attorney” for an out-of-state law firm operating an online referral service on the World Wide Web?

Ohio attorneys are being asked to enter referral agreements with an out-of-state law firm. The out-of-state law firm operates an online referral service on the World Wide Web and wants Ohio attorneys to serve as “attorney referral affiliates.” By clicking on “Talk to a Lawyer” or “Free Accident and Injury Consultation” a Web site visitor will be referred to an “attorney referral affiliate.” The “attorney referral affiliate” is an attorney licensed to practice law in the state where the prospective client resides.

Referral agreements are regulated by the Ohio Code of Professional Responsibility through the rules that govern the recommendation of attorneys by others. The rules specify with whom it is proper for an attorney to cooperate and participate in referral agreements and what type of compensation is appropriate.

Under DR 2-103(B) a lawyer is prohibited from compensating a person or entity for a referral that results in employment by a client with the exception that an attorney may pay fees or dues to any organization listed in DR 2-103(D).

DR 2-103(B) A lawyer shall not compensate or give any thing of value to a person or organization to recommend or secure the lawyer’s employment by a client, or as a reward for having made a recommendation resulting in the lawyer’s employment by a client, except that the lawyer may pay the usual and reasonable fees or dues charged by any of the organizations listed in DR 2-103(D).

Under DR 2-103(D) attorneys may participate with and be recommended by one of the offices or organizations listed within the rule.

DR 2-103(D) A lawyer shall not knowingly assist a person or organization that furnishes or pays for legal services to others to promote the use of the lawyer's services or those of the lawyer's partner or associate or any other lawyer affiliated with the lawyer or the lawyer's firm except as permitted in DR 2-101(B). However, this does not prohibit a lawyer or the lawyer's partner or associate or any other lawyer affiliated with the lawyer or the lawyer's firm from being recommended, employed, or paid by, or cooperating with, assisting, and providing legal services for, one of the following offices or organizations that promote the use of the lawyer's services or those of the lawyer's partner or associate or any other lawyer affiliated with the lawyer or the lawyer's firm if there is no interference with the exercise of independent professional judgment on behalf of the lawyer's 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 non-profit community organization.
 - (c) Operated or sponsored by a government agency.
 - (d) Operated, sponsored, or approved by a bar association.
- (2) A military legal assistance office.
- (3) A lawyer referral service that complies with division (C) of this rule.
- (4) Any bona fide organization that recommends, furnishes, or pays for legal services to its members or beneficiaries provided all of the following conditions are satisfied: [conditions (a) to (g) omitted].

Thus, an attorney may enter a referral agreement with any of the organizations listed under DR 2-103(D), provided the organizations comply with any applicable rules and regulations.

As to the question raised, the threshold issue is whether the proposed referral agreement is offered to attorneys by an appropriate organization listed under DR 2-103(D), such that the attorney may ethically participate in the agreement. The proposed referral agreement is definitely not an agreement with a DR 2-103(D)(1) legal aid office or a public defender office. It is definitely not an agreement with a DR 2-103(D)(2) military legal assistance

office. It is definitely not an agreement with a DR 2-103(D)(4) bona fide organization that recommends, furnishes, or pays for legal services to its members or beneficiaries.

A possibility is that the proposed referral agreement might be with a law firm that is operating a DR 2-103(D)(3) referral service that is in compliance with DR 2-103(C). That would depend upon the facts and whether the referral service is actually in compliance with DR 2-103(C) and the reporting and other requirements of the Lawyer Referral and Information Services Regulations. The Supreme Court Committee for Lawyer Referral and Information Services is available to ensure compliance of lawyer referral services with the provisions of DR 2-103. Therefore, this Board defers from making a fact specific determination as to whether a particular referral service is in compliance with DR 2-103(C).

In conclusion, this Board advises that whether it is proper for an Ohio attorney to enter a referral agreement with an out-of-state law firm operating an online referral service on the World Wide Web depends upon whether the lawyer referral service is in compliance with DR 2-103(C) of the Ohio Code of Professional Responsibility and with the Lawyer Referral and Information Services Regulations.

Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Code of Professional Responsibility, the Code of Judicial Conduct, and the Attorney's Oath of Office.