

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 98-1

Issued February 13, 1998

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]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: It is improper under DR 2-103(D)(4)(a) and (b) for a lawyer to receive referrals from a group legal services plan established by the lawyer and offered through an organization formed and operated by the lawyer, when that organization is a for-profit organization that bears no liability for its members. A lawyer's participation in a group legal services plan is proper only when the conditions set forth in DR 2-103(D)(4)(a) through (g) and DR 2-103(C)(3) are met.

A lawyer may pay monthly fees to an organization to be eligible to receive referrals from its group legal services plan, so long as it is a DR 2-103(D) organization. Payments to the proposed organization would not be proper because the organization does not meet the requirements of DR 2-103(D)(4)(a) and (b).

A lawyer who receives referrals from a group legal services plan is permitted to participate in the advertisement of the plan by sending a group a brochure. DR 2-103(D) allows the promotion of legal services as permitted under DR 2-101(B). Under DR 2-101(B)(3) brochures that comply with DR 2-101 are a permitted form of communication. Under DR 2-101(A)(5) terms such as "low cost," "discounted," or "below regional cost" should be avoided, but terms such as "reasonable" and "moderate" are acceptable.

OPINION: A lawyer wishes to establish a group legal services plan for churches, church members, and church employees. The plan would be offered through a for-profit organization formed and operated by the lawyer. Each church would pay the organization a one-time enrollment fee and annual renewal fees. Church members and church employees would use the church's group membership number to receive legal services at the rates identified in the plan. Legal services would be provided by the lawyer or the lawyer's firm. The lawyer would also make referrals to other lawyers who pay the organization a monthly fee to participate in providing legal services under the plan.

The following questions are addressed.

1. Is it proper for a lawyer to establish a group legal services plan, offer it through a for-profit organization formed and operated by the lawyer, and receive referrals to provide legal services to members of the plan?
2. Is it proper for a lawyer to pay monthly fees to an organization to be eligible to receive referrals from its group legal services plan?

3. Is it proper for a lawyer to participate in the advertisement of a group legal services plan by sending a group a brochure describing the services as “low cost” “discounted” or “below regional cost”?

Group legal services plans provide a structure for making legal services available to groups at affordable costs. Although group legal services plans vary, each plan shares a common feature--a contract or agreement between a group and one or more lawyers or law firms to represent the group members. Most plans fall into one of three basic categories: legal clinics; group consultation or referral plans; and risk-spreading or insurance plans. See C.W. Wolfram, *Modern Legal Ethics*, 901-904 (1986).

The plan proposed in this opinion is an example of a group consultation or referral plan. In this type of plan there is a contract between a group and a lawyer or lawyers to provide initial consultation and subsequent services at reduced fees to members of a group. There is no prepayment of legal fees which distinguishes this type of plan from risk sharing or insurance plans.

Attorney participation in group legal services plans is governed under DR 2-103 of the Ohio Code of Professional Responsibility. Under DR 2-103(D), attorneys are permitted to assist, participate with, and receive referrals from “bona fide organizations” that recommend, furnish or pay for legal services to its members, but only under the conditions set forth in DR 2-103(D)(4)(a) through (g).

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:

- (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:
 - (a) The organization, including any affiliate, is organized and operated so that no profit is derived by it from the rendition of legal services by lawyers, and that, if the

organization is organized for profit, the legal services are not rendered by lawyers employed, directed, supervised, or selected by it except in connection with matters where the organization bears ultimate liability of its member or beneficiary.

- (b) Neither the lawyer, the lawyer's partner, associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, nor any non-lawyer, shall have initiated or promoted the organization for the primary purpose of providing financial or other benefit to the lawyer, partner, associate, or affiliated lawyer.
- (c) The organization is not operated for the purpose of procuring legal work or financial benefit for any lawyer as a private practitioner outside of the legal services program of the organization.
- (d) The member or beneficiary to whom the legal services are furnished, and not the organization, is recognized as the client of the lawyer in the matter.
- (e) Any member or beneficiary who is entitled to have legal services furnished or paid for by the organization, if such member or beneficiary so desires, may select counsel other than that furnished, selected or approved by the organization; provided, however, that the organization shall be under no obligation to pay for the legal services furnished by the attorney selected by the beneficiary unless the terms of the legal services plan specifically provide for payment.

Every legal services plan shall provide that any member or beneficiary may assert a claim that representation by counsel furnished, selected, or approved by the organization would be unethical, improper, or inadequate under the circumstances of the matter involved. The plan shall provide for adjudication of a claim under division (D)(4)(e) of this rule and appropriate relief through substitution of counsel or providing that the beneficiary may select counsel and the organization shall pay for the legal services rendered by selected counsel to the extent that such services are covered under the plan and in an amount equal to the cost that would have been incurred by the plan if the plan had furnished designated counsel.

- (f) The lawyer does not know or have cause to know that the organization is in violation of applicable laws, rules of court, and other legal requirements that govern its legal service operations.
- (g) The organization has filed with the Supreme Court of Ohio, on or before the first day of January of each year,

a report with respect to its legal service plan, if any, showing its terms, its schedule of benefits, its subscription charges, agreements with counsel, and financial results of its legal service activities or, if it has failed to do so, the lawyer does not know or have cause to know of the failure.

Attorney participation in group legal services plans is also governed under DR 2-103(C)(3).

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 or the lawyer's firm, as a private practitioner, except that: (3) The lawyer may cooperate with the legal service activities of any of the offices or organizations enumerated in divisions (D)(1) to (4) of this rule and may perform legal services for those to whom the lawyer was recommended by it to do such work if both of the following apply:

- (a) The person to whom the recommendation is made is a member or beneficiary of such office or organization;
- (b) The lawyer remains free to exercise independent professional judgment on behalf of the lawyer's client.

Thus, an attorney who wishes to participate in a group legal services plan must determine whether the conditions of DR 2-103(D)(4)(a) through (g) and DR 2-103(C)(3)(a) and (b) are met. When the conditions are not met, participation is improper. Each attorney must make this determination. This Board does not give pre-approval to group legal services plans, but will advise upon the application of the rules to the specific questions raised.

Question One

Is it proper for a lawyer to establish a group legal services plan, offer it through a for-profit organization formed and operated by the lawyer, and receive referrals to provide legal services to members of the plan?

The condition set forth in DR 2-103(D)(4)(a) would not be met. The proposed plan is operated for profit. The organization bears no liability of its group members. Therefore, under the rule, the legal services cannot be rendered by lawyers employed, directed, supervised, or selected by it.

The condition set forth in DR 2-103(D)(4)(b) is also not met. The rule states that "[n]either the lawyer, the lawyer's partner, associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, nor any non-lawyer, shall have initiated or promoted the organization for the primary purpose of providing financial or other benefit to the lawyer, partner, associate, or affiliated lawyer." The underlying ethical concern is that a group

legal services plan might be used solely as a method of improper solicitation of legal business for the lawyer's benefit, rather than for the intended purpose of making legal services available to groups at affordable costs.

Under the facts presented, the attorney initiated and formed the organization for the stated purpose of providing church groups with legal services by Christian lawyers. The Board does not question this as a purpose. However, when a for-profit organization is formed by a lawyer to provide group legal services and it is the lawyer who receives referrals from the plan and who profits from providing the legal services, then it appears that the primary purpose is "providing financial or other benefit to the lawyer, partner, associate, or affiliated lawyer."

It is the Board's view that the proposed organization does not meet these conditions and would not be considered a "bona fide organization" under the rule. Because these conditions are not met, the Board goes no further in addressing other conditions within the rule.

Therefore, in answer to Question One, the Board advises that it is improper under DR 2-103(D)(4)(a) and (b) for a lawyer to receive referrals from a group legal services plan established by the lawyer and offered through an organization formed and operated by the lawyer, when that organization is a for-profit organization that bears no liability for its members. A lawyer's participation in a group legal services plan is proper only when the conditions set forth in DR 2-103(D)(4)(a) through (g) and DR 2-103(C)(3) are met.

Question Two

Is it proper for a lawyer to pay monthly fees to an organization to be eligible to receive referrals from its group legal services plan?

Under DR 2-103(B), lawyers are permitted to pay reasonable fees or dues to an organization that makes recommendations resulting in the lawyer's employment by a client, so long as the organization is 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).

Thus, the Board advises that a lawyer may pay monthly fees to an organization to be eligible to receive referrals from its group legal services plan, so long as it is a DR 2-103(D) organization. Payments to the proposed organization would not be proper because the organization does not meet the requirements of DR 2-103(D)(4)(a) and (b).

Question Three

Is it proper for a lawyer to advertise a group legal services plan by sending a group a brochure describing the services as “low cost” “discounted” or “below regional cost”?

Under DR 2-103(D), a lawyer is permitted to participate in the advertisement of a group legal service plan, but such permission is granted as an exception to a restriction. The rule states “[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).”

The dissemination of brochures is permitted under DR 2-101(B)(3).

DR 2-101(B) Subject to limitations contained within these rules:

- (3) Brochures or pamphlets containing biographical and informational data that is acceptable under these rules may be disseminated directly to clients, members of the bar, or others.

Limitations are set forth in DR 2-101(A)(5) as to how fees can be described.

DR 2-101(A) A lawyer shall not, on his or her own behalf or that of a partner, associate, or other lawyer affiliated with the lawyer or the lawyer’s firm, use, or participate in the use of, any form of public communication, including direct mail solicitation, that:

- (5) Contains characterizations of rates or fees chargeable by the lawyer or law firm, such as “cut-rate,” “lowest,” “giveaway,” “below cost,” “discount,” and “special;” however, use of characterizations of rates or fees such as “reasonable” and “moderate” is acceptable.”

The proposed brochure describes fees for the group legal services plan as “low cost” “discounted” or “below regional cost.” Although brochures are permitted under the rules, such descriptions of fees is not permitted.

In answer to Question Three, the Board advises that a lawyer who receives referrals from a group legal services plan is permitted to participate in the advertisement of the plan by sending a group a brochure. DR 2-103(D) allows the promotion of legal services as permitted under DR 2-101(B). Under DR 2-101(B)(3) brochures that comply with DR 2-101 are a permitted form of communication. Under DR 2-101(A)(5) terms such as “low cost,” “discounted,” or “below regional cost” should be avoided, but terms such as “reasonable” and “moderate” are acceptable.

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.