

Final

**RHODE ISLAND SUPREME COURT  
ETHICS ADVISORY PANEL  
Opinion No. 2000-4, Request No. 794  
Issued June 14, 2000**

Facts:

The inquiring attorney has been solicited by a consulting company whose primary business is providing business advice and procuring publicity and advertising for attorneys. The company, whose chief operating officer is an attorney licensed in another state, has created a drunk-driving defense Internet site. The company's marketing strategy is to enlist one drunk-driving defense attorney from each of the fifty states who would receive professional work from potential clients using the site. The inquiring attorney has submitted to the Panel the proposed marketing consulting agreement and other supporting materials. Pursuant thereto, a participating attorney would pay the company an initial \$5,000 setup fee. Additionally, when the attorney has received gross fees of \$100,000 as a result of "any and all Internet traffic, e-mail communications and telephone calls generated through . . . the website . . .," the attorney would pay a consulting fee of \$15,000. Thereafter, the attorney would pay \$15,000 each time gross fees attributable to the site reach \$100,000. The consulting company has solicited the inquiring attorney to be the exclusive attorney for the State of Rhode Island on its drunk-driving defense Internet site.

Issues Presented:

The inquiring attorney asks whether the proposed marketing consulting arrangement complies with the Rhode Island Rules of Professional Conduct.

Opinion:

The proposed arrangement violates Rule 7.2(c) in that the consulting fee is payment for recommending a lawyer's services, and violates also Rule 5.4(a) because the participating attorney shares the fees earned through the website with the consulting company, a nonlawyer.

Reasoning:

The Panel has visited the website that is the subject of this inquiry. Upon accessing the site, a visitor of the site may choose from a number of topics on drunk driving, as well as click on links entitled "Free Case Evaluation Online" (hereinafter "questionnaire") and "Find a Lawyer in Your State." When a visitor chooses to fill out the on-line questionnaire before locating an

attorney, the information is submitted to the consulting company. In turn, the company forwards the questionnaire to the participating attorney for the pertinent jurisdiction. When the visitor chooses to locate an attorney in his/her state, he/she is linked to the page of the participating attorney for that state. The attorney's page contains the attorney's name or firm name, address, telephone number, and e-mail, as well as an on-line questionnaire and information about drunk driving that is state-specific. If the visitor chooses to fill in this questionnaire for a case evaluation, the information is submitted directly to the participating attorney. The visitor has the option of contacting the attorney by telephone. The participating attorney, as the "gatekeeper," may refer clients to other attorneys in the state.

Rule 7.2(c) prohibits a lawyer from paying anyone a referral fee for recommending the lawyer's services. It states:

**Rule 7.2. Advertising. -**

(c) 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 this rule and may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.

In the arrangement proposed by the inquiring attorney, there is a direct relationship between the consulting fees paid to the consulting company and the attorney's fees earned through the website. A participating attorney agrees to pay \$15,000 to the consulting company for every \$100,000 in gross fees he/she earns as a result of the site. In essence, the fee paid to the consulting company is a fifteen percent commission of the gross attorney's fees. As such, the consulting fee is payment for recommending the lawyer's services and is violative of Rule 7.2(c).

The proposed arrangement is problematic in other respects. It runs afoul of Rule 5.4(a) which prohibits attorneys from sharing fees with nonlawyers. Rule 5.4(a) states:

**Rule 5.4. Professional Independence of a Lawyer. -**

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a

reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer; and

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

The fees that are to be paid to the consulting company in this inquiry are a percentage of the attorney's fees generated through the website. In the Panel's opinion, this is fee-sharing with a nonlawyer, and contravenes Rule 5.4(a). See Ariz. Bar Comm. On Rules of Prof. Conduct, Op.99-6 (1999) (attorneys who pay one-time fee to join Internet service that sends legal questions from prospective clients to participating attorneys, plus pay additional fees for every thirty questions referred, would be impermissibly sharing fees with nonlawyer.)

Because the Panel concludes that the arrangement is impermissible under Rule 7.2(c) and Rule 5.4(a), the Panel declines to address other ethical issues that are raised by this proposal, such as confidentiality (Rule 1.6), fee-sharing between attorneys (Rule 1.5(3)), and communications that imply or state a specialty (Rule 7.4).

In summary, the Panel concludes that the proposed arrangement violates Rule 7.2(c) in that the consulting fee is payment for recommending a lawyer's services, and violates also Rule 5.4(a) because the participating attorney shares his/her fees earned through the website with the consulting company, a nonlawyer. The Panel concludes that it is ethically impermissible for the inquiring attorney to participate in the proposed service, and therefore advises him/her to decline the offer to so participate.