

Final

**Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2005-01 Request No. 885
Issued February 24, 2005**

FACTS

An Internet company called Legal Match.com (hereinafter LM.com) has solicited the inquiring attorney's law firm to advertise the law firm's services on its website. LM.com provided the inquiring attorney with a description of its website and services. According to that description, LM.com's services are described as follows:

Attorney Services:

LegalMatch is an internet based advertising forum for attorneys. An interested attorney can purchase an annual membership that provides them with the following advertising services: (1) hosting a Profile page on the LM site (much like a personal web site(where the attorney can provide a picture, contact information and specifics about his or her practice such as education, past experience, memberships, specialization or certifications (if any, and any other personal or professional information that the attorney may choose to provide; (2) unlimited ability to post advertisements of specific services on the site [coming soon]; and (3) access to anonymous requests for legal services posted by consumers.

Attorneys can register to access requests in any states and practice areas where they choose to advertise their services. ALL requests are accessible to ALL attorneys who have registered to receive them. Attorneys can reply to as many requests as they choose. Upon reading a requests, attorneys have the option of posting a reply, showing interests in the matter and providing a link to their profiles and contact information.

Client Services:

LegalMatch helps consumers in need of legal services find the right attorney. Consumers coming to the site can (1) view general information about hiring attorneys; (2) read

basic legal content in the areas of their interests, (3) browse posted attorney advertisements in any area of law [coming soon]; and/or (4) post an anonymous request for legal services. The consumer is able to contact any attorney or all attorneys who have posed advertisements or replied to the consumer's request. LegalMatch encourages consumers to talk to several attorneys before retaining one to represent them. All attorney-client relationships are formed off-line and without LM participation.

LM.com's mission statement reads:

Our Mission – The Anti-Referral Service!

LegalMatch's mission is to improve access to legal services by providing people in need of legal services with sufficient information about their options to allow them to make an intelligent, educated decision about their legal representation. LegalMatch NEVER (1) refers to or recommends any specific attorney or (2) uses any discretion, beyond attorney registration, in routing requests to attorneys. Site content clearly states that LM is not a referral services and never recommends any specific attorney. Consumer views of all attorney communications, including the attorney response to a request for legal services and the attorney profile, clearly state: "**Advertising Material.**"

ISSUE PRESENTED

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

OPINION

The Panel concludes that (a) the annual membership fee represents the reasonable costs of advertising permitted by rule 7.2(c); (b) the arrangement is not a referral service; (c) payment of the annual fee to LM.com is not impermissible fee-sharing with a nonlawyer; and (d) a participating lawyer's reply to a consumer's request for legal services is not a prohibited solicitation. The Panel concludes that the proposed arrangement with LM.com is permissible under the Rules of Professional Conduct.

REASONING

Rule 5.4(a) and Rule 7.2(c) are pertinent to this inquiry. With three narrow exceptions which have no relevance to this inquiry, Rule 5.4(a) prohibits lawyers from sharing fees with nonlawyers. Rule 7.2 (c) states:

(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 Ethics Advisory Panel Opinion 2004-4, the Panel advised a lawyer that it was ethically impermissible to advertise on a company's drunk-driving defense Internet site. The strategy of the on-line company was to enlist one drunk-driving defense attorney from each state who would receive legal work from potential clients using the website. The company had solicited the inquiring lawyer to be the exclusive drunk-driving defense attorney for the State of Rhode Island. Under the plan, a participating attorney would pay the company an initial setup fee, plus a \$15,000 consulting fee for every \$100,000 the attorney received in gross fees as a result of e-mail and telephone communications generated through the website.

The Panel concluded that the arrangement violated Rule 7.2(c) in that the \$15,000 consulting fees were payments for recommending a lawyer's services. The Panel also concluded that the arrangement violated Rule 5.4(a) because participating attorneys shared fees generated through the website with the on-line company, a nonlawyer.

Turning to the instant inquiry, the Panel is of the opinion that the arrangement with LM.com is permissible. The arrangement with LM.com is not an impermissible fee-sharing with a nonlawyer under Rule 5.4(a). A participating attorney pays an annual membership to LM.com. The fee to LM.com is a flat fee which buys advertising and access to requests for legal services posted by consumers. Unlike the fees in Ethics Advisory Opinion No. 2000-04, the annual fee is not a percentage of, or otherwise linked to, a participating attorney's legal fees.

The proposed arrangement is not a referral service. LM.com does not recommend, refer, or electronically direct consumers, *i.e.* potential clients, to a specific attorney; and all requests for legal services by consumers are accessible to every attorney who registers to receive them. After viewing the various advertisements on the website, or upon receiving a lawyer's reply to a request for legal services, a consumer contacts a participating attorney directly. Attorney-client relationships are established off-line and without LM.com's participation. On the basis of these facts therefore, the annual membership fee does not

appear to the Panel to be a payment “for recommending the lawyer’s services” prohibited by Rule 7.2(c).

Indeed, the Panel believes that the annual membership fee to LM.com represents the reasonable costs of advertising which Rule 7.2(c) permits. Of course, in posting a profile page on the LM.com website, the inquiring attorney must comply with the various advertising rules set forth in other provisions of Rule 7. See e.g. Rule 7.1 (communications about lawyer’s services must not be false or misleading); Rule 7.2 (copies to be filed with disciplinary counsel; communication to include name of at least one lawyer responsible for content; lawyer to disclose whether cases are referred to other lawyers and whether client pays costs if case is taken on “no recovery – no fee” basis. Rule 7.4 (communications relating to fields of practice); Rule 7.5 (firm names and trade names).

Finally, the Panel does not believe that participating attorneys violate Rule 7.3 when they reply to consumers’ on-line requests for legal services. The request for legal services is initiated by the client, and the participating lawyer’s reply is not a prohibited solicitation under Rule 7.3.

Based on the information submitted by the inquiring attorney, the panel concludes that (a) the annual membership fee represents the reasonable costs of advertising permitted by rule 7.2(c); (b) and the arrangement is not a referral service; (c) payment of the annual fee to LM.com is not impermissible fee-sharing with a nonlawyer; and (d) a participating lawyer’s reply to a consumer’s on-line request for legal services is not a prohibited solicitation. The Panel concludes that the proposed arrangement with LM.com is permissible under the Rules of Professional Conduct.