

ETHICS ADVISORY PANEL
OPINION # 95-3, REQUEST # 560
Issued March 23, 1995

The inquiring attorney who chairs a Rhode Island Bar Association legal services committee ("Committee") writes to the Panel regarding Lawyer Referral and Information Services. The Committee proposes to institute a referral fee equal to a percentage fee received by the attorney to whom the matter is referred. The inquiring attorney states that forty percent of lawyer referral services throughout the country have instituted such a percentage referral fee. More specifically, an attorney who receives a case which generates a fee of over five-hundred dollars (\$500.) will be required to return ten percent of the amount received over five-hundred dollars (\$500.)

A California Appeals Court has held that such a percentage fee did not violate the public policy underlying the prohibition against fee-splitting as found in our Rule 5.4(a) of the Rules of Professional Conduct. (Emmons, Williams, Mires & Leech vs. State Bar of California, 6 Cal. App. 3d 565 (1970))
That Rule states:

(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 dangers of fee-splitting are competitive solicitation, potential control by the layperson interested in personal profit rather than the interests of the client, and the layperson's potential to select the attorney who pays the highest referral fee rather than the most competent attorney. In the California case cited above, the court found that the bar association did not seek individual profit but had legitimate interests in offering legal services for the public and accordingly, the public policy behind the prohibition of fee-splitting is not violated.