

Final

ETHICS ADVISORY PANEL
OPINION # 95-5, REQUEST # 563
ISSUED - JULY 13, 1995

The inquiring attorney asks whether he/she may participate in a lawyer referral service that is not affiliated with the Rhode Island Bar Association. The service is a non-profit charitable organization that offers affordable legal services. The service retains 25 percent of the total fee, the attorney performing the services is paid the balance.

This Panel recently reviewed the qualifications regarding a lawyer referral service and whether it may charge a percentage fee. In Ethics Advisory Panel Opinion # 95-3 (Issued March 23, 1995) the Panel opined that the Rhode Island Bar Association's Lawyer Referral Service may charge a percentage fee based upon specific criteria.

In that opinion, the Panel was concerned with the dangers of fee splitting which violated Rule 5.4 of the Rules of Professional Conduct. Such dangers 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 Emmons, William, Mire's and Leech v. State Bar of California, 6 Cal. App. 3d 565 (1970) the Court concluded that none of these dangers characterizes a local bar association's referral service. The Court reasoned that bar associations do not seek individual profit, rather, seek to fulfill public and professional objectives. Bar associations have a legitimate non profit interest in making legal services more available to the public and the public policy behind the prohibition of fee-splitting is not violated.

Rule 7.2(c) generally prohibits an attorney from giving anything of value to a person for recommending the lawyer's services. Because the service described by the inquiring attorney is not operated, sponsored or approved by the bar association Rule 7.2(c) would be violated by participating in this service.

Many jurisdictions have opined on this very issue and state that a lawyer may not participate in a lawyer referral service that fails to register with the state bar, interferes with the lawyer's independent professional judgment in rendering legal services, violates the rule on division of legal fees with non-lawyers, or fails to ensure that non-lawyers are properly supervised. See,

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Michigan Ethics Opinion R-6 (12/15/89), and Tennessee Formal Ethics Opinion 90-F-122 (3/9/90).

The Panel opines that a lawyer referral service must be operated, sponsored or approved by the Rhode Island Bar Association in order to safeguard the public from the potential pitfalls discussed above.