

Final

**Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2007-11 Request No. 945
Issued October 11, 2007**

Facts

The inquiring attorney, who has a private law practice, plans to establish a marketing company. The marketing company will provide marketing, advertising, and public relations services for a fee to various professionals, including doctors, chiropractic doctors, mortgage brokers, and real estate agents. Over the years, the inquiring attorney has developed good working relationships with several such professionals, and often refers law clients to them. The inquiring attorney anticipates that these professionals will likely become clients of the marketing company. The inquiring attorney would like to continue to refer law clients to professionals for whom his/her marketing company will provide services.

Issue Presented:

The inquiring attorney asks whether it is a conflict of interest under the Rules of Professional Conduct to refer law clients to professionals who are clients of a separate marketing company owned by the inquiring attorney.

Opinion:

It is not a conflict of interest under Rule 1.7 for the inquiring attorney to refer clients to nonlawyer professionals who are clients of the inquiring attorney's marketing company. The Panel advises the inquiring attorney to disclose the business relationship to clients who are so referred.

Reasoning:

In general, referring a law client to a business in which the lawyer has a financial interest triggers obligations under conflicts-of-interest rules, namely, Rule 1.8(a) (business transactions with clients), and Rule 1.7(a)(2) (material limitations to representation.) See Comment to Rule 1.7 (lawyer may not allow other business interests to affect representation, for example, by referring clients to a business in which lawyer has an undisclosed financial interest.) The inquiring attorney does not propose to refer law clients to his/her marketing company. Rather, the inquiring attorney, who has referred clients to certain nonlawyer professionals with whom he has had working relationships, wishes to continue to do so should those professionals become clients of his/her marketing company.

The Panel does not believe that such referrals would create a conflict of interest under Rule 1.7(a)(2) which states:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

* * *

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Referring clients to various doctors, chiropractors, mortgage brokers, and real estate agents who receive marketing services from the inquiring attorney's separate marketing company does not, per se, pose a significant risk of material limitation to the inquiring attorney's representation of his/her clients. Under the facts of this inquiry, the inquiring attorney does not have a direct financial interest in the individual professional practices or businesses to which his/her clients are referred. A direct financial interest would create a conflict of interest under Rule 1.7. The Panel notes, however, that the inquiring attorney has an indirect financial interest in those businesses as their provider of marketing services. The Panel believes that such an indirect interest does not meet the "significant risk" standard of newly adopted Rule 1.7(a)(2). Nevertheless, lawyers should be mindful that they must not allow personal or financial interests, direct or indirect, to obscure their objectivity or to interfere with their professional obligations to clients.

If the inquiring attorney's referrals to the various professionals are part of a reciprocal referral arrangement, the inquiring attorney must comply with Rule 7.2(c). Subsection (4) of Rule 7.2(c) is a new provision of the Rhode Island Rules of Professional Conduct which became effective on April 15, 2007. Rule 7.2(c)(4) states:

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

* * *

(4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

(i) the reciprocal referral agreement is not exclusive, and

(ii) the client is informed of the existence and nature of the agreement.

Under subsection (4), lawyers are permitted to enter reciprocal referral arrangements with lawyers and nonlawyer professionals, so long as the reciprocal referral

arrangements are not exclusive, and the client is informed about the arrangements. Even absent a reciprocal referral arrangement, the Panel advises the inquiring attorney to disclose the business relationship between him/her and the various professionals who are marketing clients in order to provide clients with the opportunity to weigh that fact before deciding to engage the referred professional, and to assure clients of his/her loyal representation.

The Panel concludes that the Rules of Professional Conduct permit the inquiring attorney to refer clients to nonlawyer professionals who are business clients of the attorney's marketing company, and advises the inquiring attorney to disclose the business relationships to clients who are referred to them.