

# Ethics Opinion

## 930927

**QUESTION PRESENTED:** Is there a violation of the Rules of Professional Conduct when an out-of-state law firm pays "runners" to recommend such firms to injured railroad workers?

**ANSWER:** Yes.

Rule 5.3(c) provides:

With respect to a nonlawyer employed or retained by or associated with a lawyer, a lawyer shall be responsible for the conduct of such person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:

- (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
- (2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 7.2(c) provides:

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 addition, it appears to this Committee that the use of such a "runner" may very well be violative of Sec. 37-61-201 MCA relating to the unauthorized practice of law when the lawyer involved is not licensed to practice in Montana. See also our Opinion 860723 regarding the possible violation of MCA 37-61-408(2) as it relates to payments to third persons for referral of cases; and Annot., Modern Status of Law Regarding Solicitation of Business By or For Attorney, 5 A.L.R. 4th 866 (1981) at 891.

While this Committee defers to the Commission on Unauthorized Practice as to the last point, it is our opinion that if an attorney practicing law in Montana pays a non-lawyer for referring cases to such attorney, such conduct is prohibited by the Rules of Professional Conduct. It is also our opinion that an out-of-state law firm soliciting business from people in Montana for cases arising in Montana is governed by the Rules of Professional Conduct as adopted in Montana. Cf. Rule 5.5, Rules of Professional Conduct.

**THIS OPINION IS ADVISORY ONLY**