

# Ethics Opinion

## 960227

**FACTS:** Attorney has inquired as to the ethical ramifications associated with joining a professional "leads network," a subgroup of his community's chamber of commerce. The stated purpose of the network is to "[h]elp member businesses flourish" through "exchanging leads," "meeting other professionals" and "involvement in the Chamber." Only one member per profession or specialty is eligible to participate in the network group. Eligibility for a network group is based on "industry conflict and a waiting list." Once a member is in the network, the member is required to earn a minimum of six "points" per quarter to maintain membership. A "lead" equals one point, while bringing a guest to a group meeting equals two points. "Leads" are defined as "true, possible business transaction[s]."

**QUESTION PRESENTED:** Would Attorney violate the Rules of Professional Responsibility in joining and becoming actively involved in such a network group?

**SHORT ANSWER:** Yes, according to Rules 5.4 and 7.2.

**DISCUSSION:** At the outset, it should be noted that informal referrals are an important part of doing business, for lawyers and other professionals. As well, not all network or referral groups run afoul of the ethical rules. In Formal Opinion 87-355, November 14, 1987, the ABA Standing Committee on Ethics and Professional Responsibility established guidelines for determining the propriety or impropriety of a particular legal service referral plan. In light of the guidelines set out in that opinion, the network at issue here is improper. Central to our conclusion is the Rule 5.4(c) provision that "[A] lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services." The potential for violating this provision is clear where there are strong interests competing with an attorney's mandatory devotion to the interests of his client - here, the tensions and demands of this network group's "point" system could conceivably unduly bias Attorney's professional judgment and compromise his duties toward his client.

Also central to our assessment is the provision of Rule 7.2(c), stating:

*(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. (emphasis added)<sup>1</sup>.*

We consider the referrals or "leads" exchanged among members of the group to be things of value which are given by one member to another who recommends his services. Whether or not a referral in and of itself is of any value, it can often become valuable if a working relationship is formed and fees for service rendered are eventually collected. In addition, the group, whose purpose is to promote the profitability of its members, is based on a reciprocal referral system; as referrals are generated and exchanged, the profits of the individual members theoretically

increase. Referrals are valuable to this scheme, where "back scratching" is both compulsory and profitable.

ABA Formal Opinion 87-355 explains that other potential pitfalls confronting referral services include difficulties of confidentiality, conflict of interest, competence and solicitation. The ABA Committee emphasized that a lawyer should not participate in a plan requiring a lawyer disclose information relating to the representation except in compliance with Rule 1.6. It also warned against group attempts to prohibit a participating lawyer from bringing certain action against other group members, noting that rejection of a matter in that circumstance might mislead the client into believing that the action has no merit. Another warning is that the plan must permit the lawyer to reject matters outside the lawyer's area of competence or which overextend the lawyer's existing workload. Finally, the ABA Committee warned of the potential for running afoul of the rule on solicitation, 7.3. While the "leads network" described above does not specifically require any of the cautioned activities addressed in Formal Opinion 87-355, the potential for running afoul of those rules is ever present.

**CONCLUSION:** We wish to reiterate our understanding of the importance of referrals in the professional world and of the benefits of legal service plans or groups. Referring clients to other lawyers with expertise in a certain area - or receiving such referrals - goes a long way toward sustaining the viability of the legal profession in many communities. As well, many communities are served by more structured referral programs which both abide by the ethical rules and provide an important service. However, the referral network at issue here is, in our opinion, not one in which Attorney should participate. The reciprocal referral system, the need to generate "points," and the drive to help fellow members increase profits are just a few of the factors which separate this species of referral service from those that are allowed by the rules.

### **THIS OPINION IS ADVISORY ONLY**

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#### **ENDNOTES**

1. For purposes of this opinion, we are not concerned with the fees Attorney is required to pay in order to be a member of the group, though the exception to 7.2(c) would seem to allow certain payment arrangements under other circumstances.