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RI-365

November 1, 2013

SYLLABUS

A lawyer's agreement to pay a referral fee to a nonlawyer-owned, for profit website entity for each potential consumer that accesses the website and expresses an interest in the lawyer's substantive law subject matter is unethical, since it requires the lawyer to give something of value to a person for recommending the lawyer's services. This for profit lawyer referral service is not advertising, since the individual lawyer is not initially identified, and the lawyer has no opportunity to review and control the language disseminated. Additionally, the fee structure is tied specifically to referrals made.

References: MRPC 7.1; MRPC 7.2; MRPC 7.2(b); MRPC 7.2(c)(i); MRPC 7.2(c)(ii): [R-6](#); [RI-9](#); [RI-24](#)

TEXT

A lawyer asks whether it is ethical to pay for client leads received from a nonlawyer-owned entity. The entity maintains a website that permits consumers to search for a lawyer by substantive law subject matter area, without listing any individual lawyer's name, contact information, or qualifications; sends a consumer the contact information of a subscribing lawyer when their listed subject matter area is selected; and charges a fee to the lawyer for every lead sent, regardless of whether the lead becomes a client. Presumably, the consumer does not pay a fee to obtain the referral and can choose whether to contact the lawyer identified.

MRPC 7.2(c)(i) permits a lawyer to pay the reasonable cost of advertising. MRPC 7.2(c)(ii) legitimates a lawyer's participation in a not-for-profit referral service but otherwise proscribes a lawyer's giving anything of value to a person for recommending the lawyer's service.¹ The central question posed is whether the lawyer's payment to the nonlawyer-owned entity constitutes payment for advertising or is either giving something of value to a person for recommending the lawyer's services or the payment of a referral fee to a for-profit referral service.

The website does not initially list the lawyer's name and contact information, and instead generates blind referrals based on a particular legal specialty practice area. As such, this does not qualify as "advertising" on behalf of the lawyer, and the fee being paid per lead can only be viewed as giving something of value to a person for recommending the lawyer's services, in derogation of MRPC 7.2(c). In effect, the website functions as a for-profit lawyer referral service.

Earlier opinions have identified circumstances in which a collective venture that did not identify a specific lawyer did not qualify as advertising, and, as a consequence, contemplated payments were not sanctioned by MRPC 7.2(c)(i).

Informal Opinion [RI-9](#) discusses a "venture for group television advertising" that sounds remarkably like the online scheme at issue here. The advertisements generically described an "Injury Helpline" without identifying any specific lawyer. The agency referred all callers from zip codes purchased by a lawyer to that lawyer. In concluding the scheme was unethical, the opinion rejected the notion that it was advertising in the traditional sense:

The plan would clearly constitute "advertising" if the tapes were custom prepared specifically for a contracting lawyer, reciting the credentials of that lawyer, etc. The listener would then have the opportunity to inquire of others regarding that specific lawyer—to compare the named lawyer with other lawyers—to think and reflect before deciding whether to call the listed lawyer or some other lawyer. Such is not the case here. The plan does not advertise the lawyer, but rather advertises the potential need for personal injury legal assistance and then makes a blind referral to a specific lawyer.

The fact that the payment scheme was an annual flat fee, seventy (70%) percent of which was to be used by the advertiser to purchase broadcast time, rather than any kind of payment tied to the number of cases referred was not persuasive that it constituted the "reasonable cost of advertising."

Similarly, Informal Opinion [RI-24](#) concludes lawyers cannot participate in a for profit lawyer referral service in which lawyers are not specifically identified in the advertising. In addition to rejecting the for profit referral arrangement, the opinion notes the lawyers' inability to insure compliance with MRPC 7.1 and 7.2 by the referral service.

In declaring that a proposed collective arrangement was not "advertising" for the payment of which was sanctioned by MRPC 7.2(c)(i), Formal Opinion [R-6](#) concludes that Michigan lawyers ethically cannot participate in a for-profit referral service. According to this Opinion, a lawyer "is allowed to pay for advertising permitted by the Rules, but is not permitted to pay another person or for-profit agency for channeling professional work" and that "a *profit-making* entity which markets lawyers' services generally as well as to a defined interest group for a fee to be paid by the lawyers participating is a lawyer referral service violating MRPC 7.2(c)," concluding that, "It does not matter whether the LRS calls itself a 'referral service group advertising' or some other name, if in fact a referral is made" ²

Common to each of these arrangements is that the communications disseminated by the nonlawyer entity provide no specific information about the participating lawyers, and the participating lawyers are not involved in the production, supervision, or dissemination of the communications—their only involvement is paying for and receiving referrals.

Consistent with earlier opinions, we conclude that the proposed arrangement requires a participating lawyer to give something of value to a person for recommending the lawyer's services and is, as well, a for-profit lawyer referral service. Nothing specific about the lawyer is advertised; the lawyer has no opportunity to review and control the language disseminated and the fee structure is tied specifically to referrals made.

1. MRPC 7.2(c)

2. Formal Opinion [R-6](#), p. 4.

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