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2013 FORMAL ETHICS OPINION 10



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PARTICIPATION IN ONLINE GROUP LEGAL ADVERTISING USING TERRITORIAL EXCLUSIVITY

Adopted: October 25, 2013

Opinion rules that, with certain disclosures, a lawyer may participate in an online group legal advertising service that gives a participating lawyer exclusive rights to contacts arising from a particular territory.

Facts:

Total Attorneys is a for-profit company that provides group advertising services to lawyers. In exchange for an advertising fee, Total Attorneys provides participating lawyers with a license to use a Total Attorneys website (TotalBankruptcy.com or TotalDivorce.com, for example) to advertise the participating lawyer's legal services. The license is geographically exclusive and only one lawyer within a particular zip code is licensed to use the advertising site. Participating lawyers pay a specified fee per contact per month to cover the costs of advertising and marketing services, including the design and operation of the website, telephone support

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services, and customer management software.

Total Attorneys establishes and maintains a website that provides consumers with information on certain legal subjects such as bankruptcy law. Consumers who wish to contact the participating lawyer within the consumer's zip code may either call a toll free number provided by the website call center, or fill out an online contact form. Total Attorneys forwards the contact to the participating lawyer. The interactions between the website call center and the consumer are limited to obtaining basic information and facilitating the first contact with the participating lawyer. The website call center does not engage in any screening or evaluation of the consumer, or the consumer's potential legal concern.

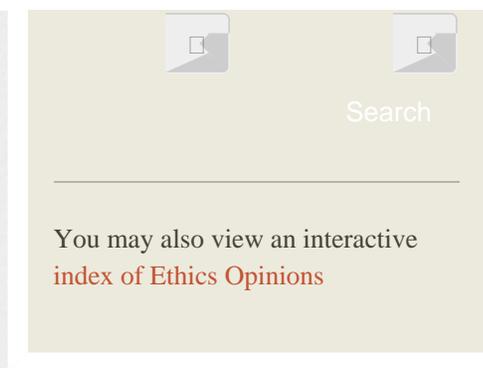
Each page on the website includes a disclaimer similar to the following:

PAID ATTORNEY ADVERTISEMENT: THIS WEB SITE IS A GROUP ADVERTISEMENT AND THE PARTICIPATING ATTORNEYS ARE INCLUDED BECAUSE THEY PAY AN ADVERTISING FEE. It is not a lawyer referral service or prepaid legal services plan. Total Bankruptcy is not a law firm. Your request for contact will be forwarded to the local lawyer who has paid to advertise in the ZIP code you provide. Total Bankruptcy does not endorse or recommend any lawyer or law firm who participates in the network, nor does it analyze a person's legal situation when determining which participating lawyers receive a person's inquiry. It does not make any representation and has not made any judgment as to the qualifications, expertise, or credentials of any participating lawyer. No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers. The information contained herein is not legal advice. Any information you submit to Total Bankruptcy does not create an attorney-client relationship and may not be protected by attorney-client privilege. Do not use the form to submit confidential, time-sensitive, or privileged information. All photos are of models and do not depict clients. All case evaluations are performed by participating attorneys. An attorney responsible for the content of this site is Kevin W. Chern, Esq., licensed in Illinois with offices at 25 East Washington, Suite 400, Chicago, Illinois 60602. To see the attorney in your area who is responsible for this advertisement, please click here, or call 866-200-8052.

Inquiry:

May a lawyer participate in the online legal service described above?

Opinion:



Yes, provided each Total Attorneys website fully, accurately, and prominently discloses the following: it provides paid group advertising services to lawyers; it is not a law firm and cannot provide legal advice; it is not a referral service; it does not recommend or endorse a particular lawyer; it does not vouch for the qualifications of participating lawyers; and each participating lawyer is licensed to use the advertising site and has paid to be the sole lawyer listed for a particular zip code.

The Arizona State Bar issued an ethics opinion that holds that a lawyer may ethically participate in an Internet-based group advertising program that limits participation to a single lawyer for each zip code from which prospective clients may come, provided the service fully and accurately discloses its advertising nature and, specifically, that each lawyer has paid to be the sole lawyer listed for a particular zip code. Ariz. State Bar Comm. on the Rules of Prof'l Conduct, Op. 2011-02 (2011).

The New Jersey Advisory Committee on Advertising similarly concluded that territorial exclusivity is permissible when such exclusivity is disclosed, the methodology for the selection of the attorney based on zip code is made clear, and the website does not assess consumers' legal needs or vouch for the qualifications of the participating attorney. NJ Advisory Comm. on Prof'l Ethics, Op. 43 (2011).

2012 FEO 10 examined numerous issues relative to a web-based company that provides litigation and administrative support services to "network" lawyers who represent clients with a particular type of legal matter (e.g., landlord's eviction) while simultaneously providing non-legal services to the same clients. In response to the exclusive arrangement with each lawyer whereby no other network lawyer may provide legal services to a participating client in a designated territory, the opinion concludes that the service is a for-profit referral service prohibited by Rule 7.2(d).

Nevertheless, the reasoning of the Arizona State Bar and the New Jersey Committee on Advertising is persuasive. With sufficient disclosure that the purpose of the website is to provide advertising and not referrals, and with disclosure of the exclusive territorial arrangement with participating lawyers, any concerns about misleading members of the public are alleviated. Provided the disclosures are truthful and there is no sharing of legal fees with the service, Total Attorneys is merely group advertising and not a for-profit lawyer referral service. *See* 2004 FEO 1 (holding that a lawyer may participate in an online service that is similar to both a lawyer referral service and a legal directory provided there is no fee sharing with the service and all communications about the lawyer and the service are truthful).

To the extent 2012 FEO 10 is inconsistent with this opinion, it is overruled.

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