

South Carolina  
Formal and Informal Opinions

SC Bar Advisory Opinion 93-09  
(07-93)

Facts: The SC Bar Lawyer Referral Service desires to impose an additional payment from each attorney receiving a referral of 10% of the collected net legal fee, in addition to the normal annual fixed fee.

The LRS would not in any way impair or control the independent professional judgment of the lawyers receiving the referral. The money collected by the LRS under this percentage arrangement would be used exclusively for the continued operation of the service, including advertisement through the public of the existence of the LRS. The administrative function of the LRS would be performed by the employees of the SC Bar under the supervision of the officers of the Bar and a committee composed of members of the Bar. The LRS would operate as a nonprofit entity.

**Question:** Does this proposal violate the prohibition against paying referral fees under Rule 7.2?

**Summary:** This proposal violates Rule 7.2(c) because the referral fee does not constitute the "usual charges" of a not-for-profit legal referral service. Also, the percentage arrangement does not represent the reasonable pro rata costs of advertising or communications; instead, the percentage fee would differ in each case and therefore would not relate to the reasonable costs of advertisements or communications. For the same reasons, these costs would not represent "usual charges" because the charges vary in each case.

**Opinion:** Rule 7.2(c) states that 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 advertisements or communications" and may pay the "usual charges" of a not-for-profit LRS. In this case, the lawyer would pay an initial annual fee, which is proper under current practice. In addition, the lawyer would pay 10% of the fee which the attorney subsequently earned from the referral to the LRS.

The comment to Rule 7.2(c) states: "a lawyer may participate in a not-for-profit LRS and pay the usual fees charged by such programs."

The problem presented is whether the words "usual charges" and the words "reasonable costs of advertisements or communications" are violated when a different fee is paid in every case dependent solely upon the fee received by the lawyer as opposed to the reasonable costs to the LRS. It is clear that the "usual charges" are not charged in a situation wherein in every case the fees differ based solely on the legal fee subsequently received. Similarly, the cost of the advertisements or communications have nothing to do with the fee charged to each lawyer in each particular case.

Instead, the referral fee paid is totally dependent on the success of the attorney in handling the particular case. It is clear that Rule 7.2 is intended to give a greater leeway to lawyer referral services operated by the Bar in charging fees to their members than would normally be allowed. For this reason, it is proper to charge a fee for a referral system which would be illegal were it done by private individuals. However, the rule does not include a blanket exception for lawyer referral services from Rule 7.2 regarding payment of referral fees. Therefore, it appears that the specific language of Rule 7.2(c) prohibits this method of financing.

**However, see attached SC Supreme Court Order of 18 May 1994.**

ORDER

This matter is before the Court upon petition of the South Carolina Bar seeking amendment of the comment to Rule 7.2, Rule 407. The petition states that the amendment is requested to eliminate concern of some Bar members that remittances under the Lawyer Referral Service Rules as revised at the meeting of the House of Delegates on January 21, 1994, are not permitted under Rule 407.

IT IS THEREFORE ORDERED that the comment to Rule 7.2, Rule 407 is amended by adding the following sentence as the fifth sentence in the last paragraph of that comment.

"Usual fees" may include a portion of legal fees collected by an attorney from clients referred by the service when that portion of fees is collected to support the expenses projected for the referral service.

IT IS FURTHER ORDERED that the amendment shall be effective immediately.