

Rhode Island  
Formal and Informal Opinions

Lawyer Referral Service Fees To Riba Allowed

The inquiring attorney who chairs a Rhode Island Bar Association legal services committee writes to the panel regarding its Lawyer Referral and Information Services. The committee proposes to institute a referral fee equal to a percentage fee received by the attorney to whom the matter is referred. The inquiring attorney states that 40 percent of lawyer referral services throughout the country have instituted such a percentage referral fee. More specifically, an attorney who receives a case which generates a fee of over \$ 500 will be required to return 10 percent of the amount received over \$ 500.

A California appeals court has held that such a percentage fee did not violate the public policy underlying the prohibition against fee-splitting as found in our Rule 5.4(a) of the Rules of Professional Conduct. (Emmons, Williams, Mires & Leech vs. State Bar of California, 6 Cal. App. 3d 565 (1970))

That rule states:

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer; and

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

The dangers of fee-splitting are competitive solicitation, potential control by the layperson interested in personal profit rather than the interests of the client, and the layperson's potential to select the attorney who pays the highest referral fee rather than the most competent attorney. In the California case cited above, the court found that the bar association did not seek individual profit but had legitimate interests in offering legal services for the public and accordingly, the public policy behind the prohibition of fee-splitting is not violated.

Rule 7.2(c) is also pertinent to this discussion. The rule generally prohibits an attorney from giving anything of value to a person for recommending the lawyer's services. One exception is that an attorney may "pay the usual charges of a not-for-profit lawyer referral service or legal service organization." The "usual charges" include flat enrollment charges as well as percentage fees. The percentage fee is a well established method of funding lawyer referral service. See, ABA/BNA Lawyer's Manual on Professional Conduct 41:804.

The usual charge of the percentage fee should be reasonable and should not affect the quality of legal services performed by the attorney. The referral fee should not be so great as to infringe upon the lawyer's initiative and enthusiasm regarding the results achieved.

A lawyer referral service is charged with making legal services readily available to the public. It would be inappropriate to use the fees for the general operating expenses of the Bar Association. Such funds should be used in furtherance of the goal of making legal services so available.

Opinion # 95-3, Request # 560

Issued March 23, 1995