

OPINION 502

April 1994

Question Presented

Is it a violation of The Texas Disciplinary Rules of Professional Conduct for a panel attorney to remit a part of her legal fees to a lawyer referral service operated in compliance with Art. 320(d) Vernon's Ann. Rev. Civ. Stat. (Supp. 1944) by a not-for-profit legal aid organization that is funded by public and private contribution?

Statement of Facts

A not-for-profit legal aid organization that is funded by public and private contributions operates a lawyer referral service. This lawyer referral service is intended to benefit Texas state citizens 60 years of age or older without regard to the citizens' income level, subject to certain exceptions not material herein.

Eligible attorney participants in the lawyer referral service include all attorneys licensed in Texas and who satisfy the enrollment requirements of the lawyer referral service. These enrolled attorneys constitute the referral panel.

The enrollment procedure includes a written application by the attorney, an interview of the attorney by the managing attorney for the lawyer referral service, confirmation of insurance coverage, review of work samples and follow-up of references furnished by the applying attorney. Additionally, the status of the applying attorney with the State Bar of Texas is checked.

Once the applying attorney once approved as a referral panel attorney is required to execute a written referral attorney Agreement with the lawyer referral service. This agreement details the relationship between the referral panel attorney and the lawyer referral service. Under the express terms of the referral attorney Agreement the referral panel attorney is required to charge for legal services rendered to referred clients in accordance with a maximum fee schedule incorporated into the referral attorney agreement. Provided for therein is a referral fee of \$20 which is collected by the referral panel attorney at the initial consultation and then remitted to the lawyer referral service to fund in part its cost of operation. Further, the maximum fee schedule provides that the first one-half hour of consultation with the referral attorney is without charge to the client. If, however, services beyond the first one-half hour are desired, the referral panel attorney will bill for services rendered in accordance with the fee schedule. Various calculations of the fee, including flat fees, contingent fees and percentage fees are allowed. Should the fee generated equal or be greater than \$480 then one-sixth of the fee collected is remitted to the lawyer referral service. The percentage fee is not capped.

The lawyer referral service disclaims any interference with the independent professional judgment of the referral panel attorney in the handling of the referred matter. All referrals are made on a random rotational basis by computer.

The referral attorney agreement mandates that the procedures of the referral panel shall comply with the Texas Disciplinary Rules of Professional Conduct.

Discussion

The committee assumes in its opinion the lawyer referral service complies with Art. 320(d) Vernon's

Ann. Rev. Civ. Stat. (Supp. 1994). The legislative purpose of Art. 320(d) is stated in part in Sec. 2(b): "Bona fide lawyer services are uniquely qualified to provide referral services under the supervision of the State Bar of Texas for the benefit of the public. It is the public policy of the state to support the establishment of lawyer referral services ..."

[Rule 1.04](#)(f) prohibits fee splitting between lawyers who are not in the same firm subject to exceptions not applicable here.

[Rule 5.04](#)(a) prohibits a lawyer from sharing or promising to share a legal fee with a non-lawyer subject to exceptions not applicable here. Further comment 1 to Rule 5.04 addresses the reasons for the curbs on fee sharing with non-lawyers, prevention of improper solicitation by non-lawyers and discouragement of the unauthorized practice of law by non-lawyers.

Comment three to Rule 5.04 allows a lawyer to reimburse a bona fide or pro bono legal services entity for reasonable expenses incurred in connection with the matter referred to or incurred by the attorney. Such reimbursement is deemed outside the meaning of fee sharing contemplated by Rule 5.04.

The spirit of Rule 5.04(a) addresses improper financial gain by non-lawyers from the services of lawyers and the unauthorized practice of lawyer by non- lawyers. Concerns regarding impermissible solicitation and the unauthorized practice of law appear to be unfounded within the context of a lawyer referral service operated in accordance with Art. 320(d). The legislative purpose is accomplished through the rendition of legal services to targeted clients.

Further, [Rule 7.01](#)(f) permits the lawyer to "pay the usual charges and otherwise cooperate with organization that refer clients if the organization does not profit from the rendition of legal services by lawyers."

The fees collected by the lawyer referral service are used to fund its operation. As a non-profit entity the lawyer referral service is permitted by the Rules to collect a reasonable fee generated by its referral panel attorneys. Such fee sharing does not constitute impermissible division of a legal fee under the rules.

Conclusion

A non-profit lawyer referral agency operating in compliance with Art. 320(d) Vernon's Ann. Rev. Civ. Stat. (Supp.1994) may collect a reasonable fee within the guidelines set forth in Art. 320(d) earned by its referral panel attorneys without violating the Texas Disciplinary Rules of Conduct.