

The Supreme Court of Texas
Professional Ethics Committee

*1 Opinion Number 562
October 2005

QUESTION PRESENTED

Do the Texas Disciplinary Rules of Professional Conduct permit a lawyer to participate in a federal government program that negotiates contracts with lawyers to provide legal services to federal agencies and then recommends or refers those lawyers to the federal agencies, where the program is not certified as a lawyer referral service under Texas law and the lawyer is required to pay to the program one percent of the legal fees earned through the program to be used for paying the costs of operating the program?

STATEMENT OF FACTS

A federal program (the "Federal Program") of the General Services Administration (the "GSA"), and agency of the Executive Branch of the United States Government, provides to other departments and agencies of the Executive Branch of the United States Government ("Federal Agencies") a schedule of pre-negotiated contracts for goods and services, including legal services. An office of the GSA, the Federal Supply Service (the "FSS") solicits the bids and awards the contracts. The FSS then recommends or refers the providers to Federal Agencies by placing these contracts on a "schedule" from which Federal Agencies may select the service provider, in this case a lawyer, at a substantially reduced cost. A federal agency is not required to select a lawyer from this schedule but is free to independently hire counsel not on the schedule.

The Federal Program's costs are paid by charging each participating provider a fee of one percent of the fees earned by the provider through the program. Thus, a lawyer who bids under the Federal Program to participate on a schedule contract to provide legal services to Federal Agencies would be obligated to pay the FSS one percent of the legal fees thereby earned if the lawyer is selected by a Federal Agency to provide legal services under the schedule contract.

The FSS has not sought to have the Federal Program certified as a lawyer referral service under Texas law.

DISCUSSION

The Committee believes that the Federal Program should properly be viewed as a program involving a single entity, the Executive Branch of the United States Government, under which one part of the entity (the FSS) assists other parts of the entity (the Federal Agencies) in obtaining legal services under the schedule contracts. This opinion applies only in the case of legal services provided to Federal Agencies and the Committee expresses no opinion as to a Texas lawyer's participation in the Federal Program to the extent that services are provided to agencies or entities that are not included within the definition of "Federal Agencies" set forth above.

[Rule 5.04\(a\) of the Texas Disciplinary Rules of Professional Conduct](#) generally prohibits a lawyer or law firm from sharing or promising to share legal fees with a non-lawyer. However, as Comment 3 to [Rule 5.04](#) explains, "[r]eimbursement by a lawyer made to bona fide or pro bono legal services entity for its reasonable expenses in connection with the matter referred to or being handled by the lawyer"

does not constitute a prohibited division of legal fees. Nor would the negotiation with a client of a discount on legal fees constitute a prohibited division of legal fees. This is true regardless of whether the discount is applied before legal fees are paid by the client or is applied after legal fees are paid by the client so that the discount is paid back to the client. This is also true regardless of whether the discount is in the form of a fixed amount, a reduced hourly rate, or a percentage of the entire fee. Since the one percent fee paid to the FSS under the Federal Program with respect to services to Federal Agencies should properly be viewed as an agreed reduction in fees negotiated with a client, the lawyer's payment of the one percent fee under the Federal Program with respect to services to Federal Agencies is not prohibited by [Rule 5.04\(a\)](#). Likewise, since the Federal Program is properly viewed as involving a negotiated reduction in fees, a Texas lawyer's participation in the Federal Program does not result in a violation of Rule 7.03(c) (which with limited exceptions prohibits a lawyer from making or offering payments to a prospective client or other person in order to solicit professional employment).

*2 [Rule 7.03\(b\) of the Texas Disciplinary Rules of Professional Conduct](#) generally prohibits a lawyer from paying a non-lawyer for referring clients or prospective clients to the lawyer. That Rule states in pertinent part that

"A lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting prospective clients for, or referring clients or prospective clients to, any lawyer of firm"

The purpose of this rule is to prohibit a lawyer from circumventing the disciplinary rules on improper solicitation by hiring a non-lawyer to do the actual solicitation, a course of conduct that is considered against the best interest both the public and the legal profession. See Comment 3 to [Rule 7.03](#).

One exception to the general prohibition of [Rule 7.03\(b\)](#) on payments for referrals exists for payments of "the usual charges of a lawyer referral service that meets the requirements of" chapter 952 of subtitle B of title 5 of the Texas Occupations Code, which is known as the Texas Lawyer Referral Service Quality Assurance Act (the "Texas Lawyer Referral Act"). The Texas Lawyer Referral Act creates a licensing scheme for any service or program that refers potential clients to lawyers regardless of whether the program or service characterizes itself as a "referral service" and specifically prohibits the operation of a lawyer referral service in Texas unless the service holds a certificate issued under the Texas Lawyer Referral Act. See [Texas Occupations Code Sections 952.002](#) and [952.101](#). To obtain a certificate under the Texas Lawyer Referral Act, a referral service must be operated by a governmental entity or a tax-exempt non-profit entity and the service must meet a number of requirements, including the establishment of "specific subject matter panels" and a limitation to \$20 on the fee for a first consultation with a participating lawyer. See [Texas Occupations Code sections 952.102](#), [952.154](#), and [952.155](#).

In the circumstances presented, the Federal Program does not hold a certificate under the Texas Lawyer Referral Act to operate a lawyer referral service. However, the Committee believes that, without regard to whether the Federal Program holds a certificate under the Texas Lawyer Referral Act, the Federal Program does not involve conduct that violates [Rule 7.03\(b\)](#). The FSS is a part of the United States Government which recommends and negotiates for legal services for other parts of the Executive Branch of the United States Government. The actions of the FSS under the Federal Program are thus properly viewed as actions by the United States Government to evaluate, negotiate with, and recommend lawyers on behalf of itself or divisions of itself or groups within itself. Accordingly, for purposes of applying [Rule 7.03\(b\)](#), the Federal Program involves negotiation by a client entity of the terms of employment of lawyers providing services to the entity and not an arrangement in which a lawyer agrees to pay a third party for referring other clients to the lawyer. Consequently the Federal Program does not involve a lawyer's payment to a non-lawyer for referring clients in violation of [Rule 7.03\(b\)](#).

CONCLUSION

*3 The Texas Disciplinary Rules of Professional Conduct do not prohibit a Texas lawyer from participating in a federal government program that is administered by an agency that is part of the Executive Branch of the United States Government, that refers departments and agencies of the Executive Branch of the United States Government to lawyers who participate in the program, and that requires each participating lawyer to pay to the administering federal agency a fee equal to one percent of legal fees received by the lawyer under the program.