

1 (DRAFT – APRIL 14, 2009)

2
3 LEGAL ETHICS OPINION 1851

PARTICIPATION IN A THIRD-PARTY
INTERNET WEBSITE

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6 This staff generated opinion addresses whether a lawyer may participate in a
7 third-party Internet website which invites a prospective client to submit case information.
8 The prospective client's information is then forwarded to each of the participating
9 lawyers in the relevant geographic and practice area. The method for forwarding the
10 information is fully automated. The contacted lawyers review the information and
11 respond to the prospective client directly if interested in representation. Participation on
12 the website is generally restricted to five or fewer lawyers. A lawyer may also be
13 permitted to purchase an exclusive listing in a specific geographic area. The fee paid by
14 a participating lawyer for inclusion on the website often varies depending on the lawyer's
15 practice area and geographic area. In some instances, the lawyer pays a fee based upon
16 the number of referrals received or the number of client contacts made by the lawyer.
17 The prospective client does not pay a fee to utilize the website in finding a lawyer.

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19 QUESTION PRESENTED

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21 May a lawyer ethically participate in a third-party Internet website service that
22 invites a prospective client to submit case information and then automatically forwards
23 that information to a very limited number of participating lawyers if the service:

- 24 (1) charges a fee based upon either an agreement to an exclusive geographical
25 listing for the lawyer;
26 (2) charges a fee based upon very strict limitations on the number of participating
27 lawyers in each geographical practice area; or
28 (3) charges a set fee per referral or client contact.

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30 APPLICABLE RULES AND ANALYSIS

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32 Rules 7.2(c) and 7.3(d) restrict a lawyer from giving something of value to a
33 person or organization in exchange for recommending employment by a client or as a
34 reward for having made a recommendation resulting in employment by the client.¹

¹ Rule 7.2 Advertising

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may:

- (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
(2) pay the usual charges of a not-for-profit lawyer referral service or legal services organization;
and
(3) pay for a lawyer practice in accordance with Rule 1.17.

Rule 7.3 Direct Contact With Prospective Clients and Recommendations Of Professional Employment

(d) A lawyer shall not give anything of value to a person or organization to recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a

35 Unlike for-profit directory advertising, which is open to anyone who wishes to
36 participate, and which is permitted by the rules, the third-party website in question limits
37 its listing to less than five lawyers in a given geographical or practice area. By restricting
38 the number of lawyers who are listed, the website appears to be recommending
39 participating lawyers to the prospective client.² Therefore, any payments made by the
40 lawyer who participates on such a website amounts to an impermissible “giving of value”
41 in exchange for a recommendation of employment by a client in violation of Rules 7.2(c)
42 and 7.3(d).

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44 Furthermore, the Committee considers the payment based upon the number of
45 referrals, which vary depending on the number of client contacts made, amounts to an
46 impermissible *quid pro quo* for services because the fee paid by the lawyer is directly
47 related to the number of prospective clients with whom the lawyer makes contact. Such
48 fees do not represent the usual fees or dues charged by a lawyer referral organization, nor
49 are they the normal fees that a lawyer might pay an organization for public advertising.

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51 Rule 7.2(c) further prohibits a lawyer from participating in a referral service that
52 is operated for-profit. Therefore, to the extent the website described in this opinion can
53 be characterized as a referral service, where the referral service fees are in excess of the
54 amount required to cover reasonable overhead expenses, lawyer participation in the
55 service is prohibited.³ See also Legal Ethics Opinions 1175, 1348, 1689, and 1750 for
56 additional information regarding lawyer referral services in Virginia.

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58 This opinion is advisory only, and not binding on any court or tribunal.

client, except that the lawyer may pay for public communications permitted by Rules 7.1 and 7.2 and the usual and reasonable fees charged by a lawyer referral service and any qualified legal services plan or contract of legal services insurance as authorized by law, provided that such communications of the service or plan are in accordance with the standards of this Rule or Rules 7.1 and 7.2, as appropriate.

² Indeed, by restricting participation to only five lawyers in a geographic area, the third-party Internet website described in this opinion seems to be granting exclusivity to those five lawyers by referring prospective clients only to those lawyers who have paid to participate. See LEO 1348, no single lawyer should have access to more than a single opening (position) on the referral list in the lawyer's geographic region; LEO 1689, the actual configuration of lawyers in a referral service must be such that subscribing members of the public are not deceived as to the availability of a variety of lawyers; and LEO 1750, it is deceptive to state or imply that there are a substantial number of attorneys or firms participating in the lawyer referral service when in fact all calls in a geographic area will be directed to one or two attorneys or firms.

³ See LEO 1348, a lawyer referral service can require the lawyer to pay a one-time enrollment and production fee, in addition to monthly administrative and media fees, so long as there is no correlation between the fees paid to the corporation and either the number of referrals received by a given attorney or the amount of the legal fees generated in any given case.