

Withdrawn/June 13, 2016
Committee Opinion
August 12, 1993

LEGAL ETHICS OPINION 1543

ADVERTISING — RECOMMENDATION
OF PROFESSIONAL EMPLOYMENT:
ATTORNEY PAYING “REFERRAL”
SERVICE FOR “EXCLUSIVE RIGHTS”
TO ALL PROSPECTIVE CLIENTS IN
FOUR COUNTIES.

You have presented a hypothetical situation in which a national, nonprofit lawyer referral service (“Service”) contacts an attorney. In exchange for an annual \$300 membership fee, the Service offers to exclusively refer the attorney to individuals needing representation in traffic matters in four Virginia counties.

Through the membership application, the attorney authorizes the Service to provide individuals with his name, address, and phone number. The Service makes no other representation regarding the attorney or the attorney's practice.

The Service indicates that it has given the attorney's name to thirteen truckers. The attorney has represented four of the thirteen truckers. In each case, the attorney negotiates the fees to be charged, and the driver decides whether to hire the attorney.

You have asked the committee to opine whether, under the facts of the inquiry, (1) the attorney's “exclusive rights” to those persons seeking representation in four counties violate the five attorneys per region provision of LE Op. 1348, and (2) whether the attorney's participation in the Service is otherwise permissible.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:2-101(A) which provides that a lawyer shall not use or participate in the use of any form of public communication if such communication contains a false, fraudulent, misleading, or deceptive statement or claim; and DR:2-103(D) which states that a lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client, or as a reward for having made a recommendation resulting in his employment by a client, except that he may pay for public communications permitted by DR:2-101 and the usual and reasonable fees or dues 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 DR:2-101 or DR:2-103, as appropriate.

You have appropriately recognized LE Op. 1348 as providing basic parameters for the operation of a for-profit lawyer referral service, including a requirement that there be a minimum of five participating attorneys in each region in which such a service operates. The committee is of the opinion that the four counties constitute a “region”, and the attorney's “exclusive rights” under the described referral service would be improper under DR:2-103(D) and the above-cited Legal Ethics Opinion.

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As to whether the attorney's participation in the lawyer referral service is otherwise permissible, the committee does have other concerns as to the proposed arrangement. Although the committee is unclear as to the definition of "region", if, however, the four counties constitute a "region," then the attorney's exclusive rights" would be improper as evincing access by a single lawyer to more than a single position on the referral list in his geographic region. Also, in order to avoid deception under DR:2-101(A), the committee believes that disclosure by the lawyer referral service's agents, of the fact that the participating lawyers have paid a membership fee, as well as the relationship between the service and the participating lawyers, would be required. Finally, the committee believes that it would be *per se* improper for a lawyer to participate in a lawyer referral service which initiates contact with prospective clients. See LE Op. 1348.

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WITHDRAWN