

**THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
COMMITTEE ON PROFESSIONAL ETHICS**

Formal Opinion 2017-1: Payment of Fees to a Legal Referral Service

TOPIC: Payment of fees to a legal referral service

DIGEST: A lawyer referral service operated by a bar association that cooperates in making referrals may share referral fees with another lawyer referral service, as long as both are qualified legal assistance organizations operating in accordance with the Rules of Professional Conduct.

RULES: 1.0(h); 1.0(p); 7.2; 8.4(a)

QUESTION: May a lawyer pay a fee to a lawyer referral service operated by a bar association, if the referral service intends to share the referral fee with a lawyer referral service operated by a different bar association?

OPINION:

I. INTRODUCTION

This Opinion addresses the following scenario:

Various local bar associations run qualified lawyer referral services in their respective localities in the State. Upon request by a prospective client who seeks assistance with a legal matter, the referral services refer the prospective client to a qualified attorney in the relevant geographic area who has agreed to participate in the referral service and who meets its requirements. When the referral results in a fee-generating representation, the referral service is entitled to a payment from the attorney, which is often a percentage of the total fee collected. On occasion, a referral service that is unable to refer the prospective client to a qualified attorney refers the prospective client to a second referral service. If the second referral service receives a payment from the attorney to whom it makes a successful referral, it may offer to share a portion of the payment with the referral service that was first contacted by the client. This Opinion addresses whether this arrangement is proper and, if not, whether the attorney receiving the referral may pay a referral fee under these circumstances.

II. BACKGROUND ON LAWYER REFERRAL SERVICES

Rule 7.2(a) of the New York Rules of Professional Conduct (the “Rules”) generally prohibits a lawyer from compensating a person or organization for recommending the lawyer’s employment by a client. The rule makes an exception, however, when the referral is made by a “qualified legal assistance organization,” which Rule 1.0(p) defines as “an office or organization of one of the four types listed in Rule 7.2(b)(1)-(4) that meets all of the requirements thereof.” Rule 7.2(b)(1)-(4) defines qualified legal assistance organizations as: (i) legal aid and public defender offices; (ii) military assistance offices; (iii) legal referral services operated by bar associations; and (iv) certain bona fide organizations providing

legal services to their beneficiaries and members.

The comments to Rule 7.2 elaborate on the exception allowing lawyers to receive referrals for, and provide payments to, qualified legal assistance organizations. Specifically, Comment [2] states that “[a] lawyer may pay the usual charges of a qualified legal assistance organization” but cautions that “[a] lawyer so participating should make certain that the relationship with a qualified legal assistance organization in no way interferes with independent professional representation of the interests of the individual client.” Comment [3] advises that “[a] lawyer who accepts assignments or referrals from a qualified legal assistance organization must act reasonably to ensure that the activities of the plan or service are compatible with the lawyer’s professional obligations. The lawyer must ensure that the organization’s communications with prospective clients are in conformity with these Rules. . . .” (Citations omitted).

NYSBA Op. 651 (1993) (“Opinion 651”) addressed the utility of bar association-operated referral services, stating:

The legal profession has developed lawyer referral services designed to aid individuals who are able to pay fees but need assistance in locating lawyers competent to handle their particular problems. Use of a lawyer referral system enables an individual to avoid an uninformed selection of a lawyer because such a system makes possible the employment of competent lawyers who have indicated an interest in the subject matter involved. Lawyers should support the principle of lawyer referral systems and should encourage the evolution of other ethical plans which aid in the selection of qualified counsel.

We consider here whether one qualified legal referral service may share a referral fee with another with which it collaborated in making a referral. For example, a bar association’s lawyer referral service may not have on its lists, or otherwise be able to identify, a lawyer who is capable of handling the prospective client’s matter. Or the referral service may be asked to recommend a lawyer outside the geographic locale in which it operates. In such circumstances, the service may refer the prospective client to another bar association’s referral service. If a retention results, the second referral service may receive a payment from the lawyer who was retained, as Opinion 651 describes. The question is whether the second referral service may share the payment with the first service.

We note preliminarily that a legal referral service is not regulated directly by the Rules of Professional Conduct. The Rules apply only to individual lawyers and, in some cases, law firms. A legal referral service is not itself subject to the Rules, since it is not an organization “authorized to practice law” and therefore does not fall within the definition of a “law firm.” *See* Rule 1.0(h). But that said, the Rules have implications for how bar associations operate legal referral services. In general, lawyers may not accept referrals from non-lawyer organizations under circumstances that violate the Rules. *See, e.g.*, NYSBA Op. 917 (2012) (lawyer may not accept referrals from non-lawyer marketer than engages in in-person solicitation). In particular, as Comment [3] indicates, a lawyer may not accept referrals from a referral service that operates incompatibly with the lawyer’s professional obligations. Further, Rule 8.4(a) prohibits a lawyer from assisting another lawyer in violating the Rules of Professional Conduct. Thus, any lawyer who is affiliated with or employed by a legal

referral service must refrain from assisting the lawyer paying the referral service's fees in violating the Rules.

III. PAYMENTS TO LEGAL REFERRAL SERVICES

Rule 7.2(a) allows a lawyer accepting referrals from a qualified legal assistance organization to “pay the usual and reasonable fees or dues charged by” the organization. Opinion 651 concluded that under the predecessor (and analogous) provision of the Code of Professional Responsibility (DR 2-103(C)(1)), a lawyer may “pay a bar association legal referral service a percentage of the fees the lawyer receives from clients referred by the service, as opposed to a flat fee determined per annum, per month, per referral or on some other objective basis not related to actual fees received from particular clients.” The opinion reasoned that “[t]he proposed arrangement does not implicate the valid concerns that led to the adoption of the fee-splitting prohibitions” (citing *Emmons, Williams, Mires & Leech v. State Bar of California*, 86 Cal. Rptr. 367 (Ct. App. 1970) and earlier bar association opinions).

We see no reason why one lawfully-operated referral service (or other qualified legal assistance organization) cannot cooperate with, and share referral fees with, another, as long as the lawyer's required payment to the second referral service is not increased by virtue of the fact that it will be divided. Under Rule 7.2(a), either referral service may charge the lawyer a fee since both referral services will have contributed to the ultimate referral. Further, fee-sharing between bar associations' referral services does not cause any harm against which the fee-sharing rule protects and is consistent with the purposes for which Rule 7.2 exempts bar associations' referral services from the restriction against paying a person or organization for a referral.

We note that the analysis and outcome would be different if the original referral to the lawyer referral service were made by a person or an entity other than a qualified assistance organization. In that event, it would not be permissible for the referral service to share the payment. For example, if an acquaintance of the prospective client refers the prospective client to the lawyer referral service, the service may not compensate the acquaintance. The payment in that instance would function as an indirect referral fee to the individual, which is forbidden by Rule 7.2(a). Further, legal referral services may not be operated for private individuals' profit, and, as noted, lawyers may not accept referrals from referral services that do not operate in conformity with the Rules.

IV. CONCLUSION

Lawyer referral services operated by bar associations that cooperate in making referrals may share referral fees with each other, as long as both are qualified legal assistance organizations operating in accordance with the Rules and as long as the total fee paid by the lawyer receiving the referral is not affected by the referral service's sharing of the fee.