

STATE BAR OF SOUTH DAKOTA

ETHICS OPINION 98-10

January 12, 1999

- **Rules:** 1.5, 5.5, 7.1, 7.2
- **Subject:** *Internet Referral Service; Advertising; Fee Division; Assisting in Unauthorized Practice of Law*
- **Summary:** *South Dakota lawyer may not participate in an Internet Referral Service taking an advertising fee and a share of legal fees to refer cases to South Dakota lawyer and provide no legal services*

FACTS

You are an attorney in private practice and received an e-mail solicitation and proposed contract from an entity operating on the Web. A foreign company professing “to provide Internet legal resources,” but “does not practice law” offers to “provide you with clients ... needing representation.” The company claims to have some unstated relationship with a non-South Dakota lawyer with power to remove you from participation. You are asked to pay \$50 annually to this non-South Dakota lawyer and to remit 10 percent of “each fee over \$100 received from referred matters” Neither the solicitation, nor the proposed contract of the company, indicates any intent to participate in the actual legal work in any manner.

You asked whether you may ethically participate in this referral service.

OPINION

It is the opinion of the Ethics Committee that you are ethically prohibited from participating in this service. Several ethics rules and an ethics opinion preclude this type of service in South Dakota.

In Ethics Opinion 90-3, the Committee examined a lawyer's participation in making payments to a referral service which promised to run TV commercials and list an 800 number for lawyer referrals. The program didn't even discuss taking part of a lawyer's fee. The Ethics Committee opined that the "service" violated Rule 7.2 because it was advertising and was cost sharing prohibited by then Rule 7.2(c). Rule 7.2(e) still prohibits cost sharing and provides:

No lawyer shall, directly or indirectly, pay all or part of the costs of an advertisement by another lawyer with whom the non-advertising lawyer is not associated in a partnership, professional corporation, or limited liability company for the practice of law, ...

without extensive disclosures not pertinent here. While the medium may have changed, the Internet has not changed a lawyer's professional obligations. This appears to the Committee to be a prohibited cost sharing arrangement.

Besides Rule 7.2 and Ethics Opinion 90-3, other rules are implicated by this proposal. Rule 7.1 prohibits any communication which “fails to disclose the name and address by city and town of the lawyer who services are described.” No such disclosure is included in the solicitation or proposed contract.

Rule 1.5(e)(1) provides for division of fees between lawyers of different firms “only if (i) the division is in proportion to the services performed by each lawyer” or “by written agreement with the client, each attorney assumes joint responsibility for the representation” and the client gives informed consent. This service provides absolutely no legal service to the client and takes a percentage of the fee. The foreign lawyer and service take no responsibility for the representation. In the opinion of the Committee, this proposal violates Rule 1.5(e).

Taking a fee for the performance of legal services is part of the practice of law. Neither the service company nor the foreign attorney are licensed to practice law in South Dakota. South Dakota Rule 5.5(b) prohibits a South Dakota lawyer from assisting “a person who is not a member of the Bar in the performance of activity that constitutes the unauthorized practice of law.”

For all the foregoing reasons, it is the opinion of the Committee that you may not ethically participate in the proposed referral service.

Lonnie R. Braun
Chair, Ethics Committee
State Bar of South Dakota