

Opinion 524
May 1998
Tex. Comm. on Professional Ethics. Op. 524, V. 61 Tex. B.J. 460 (1998)

QUESTION PRESENTED

Does a lawyer violate the Texas Disciplinary Rules of Professional Conduct (the Rules) by accepting a referral from a health-care provider, when the lawyer knows the referred individual was solicited by the health-care provider for purposes of providing health care.

STATEMENT OF FACTS

A plaintiff=s attorney practicing primarily personal injury law has clients referred to her by chiropractors and medical doctors. These health-care providers obtain clients through telemarketers who locate potential patients from accident reports. Those individuals identified on the accident report as injured parties are contacted by the telemarketers and advised to seek health care for their injuries from the health-care providers on whose behalf the solicitation is made. The scope of the solicitation does not extend beyond securing employment for the health-care providers to treat the injured parties. At the patient=s request, the health-care providers will give the patient a list of names, addresses, and telephone numbers of attorneys with whom the health-care providers have worked in the past. The health-care providers are not compensated by the attorney for the referral, nor did the attorneys set up the telemarketing scheme.

DISCUSSION

Rule 7.03 of the Rules addresses issues involving prohibited solicitations and payment by attorneys. Specifically, Rule 7.03(b) states in part, that A[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 or firm Ψ≡

Further, Rule 7.03(d) provides in part that A[a] lawyer shall not enter into an agreement for, charge for, or collect a fee for professional employment obtained in violation of Rule 7.03 Ψ (b) Ψ≡ Additionally, see Rule 7.06.

This committee assumes that the attorney who accepts the referral under the circumstances described in the fact situation has done nothing by way of inducement or enticement to the health-care providers to secure professional employment. Absent facts demonstrating that the lawyer in this case is circumventing Rule 7.03 by having a non-lawyer solicit cases on her behalf, this committee concludes that the attorney may accept the referral. The solicitation by telemarketing on behalf of the health-care providers is limited to securing patients for medical treatment and does not taint the referral.

The committee does not interpret statutory authority, such as Section 38.12 of the Texas Penal Code and Section 82.065 of the Texas Government Code. This opinion, therefore, does not address the propriety of the conduct of the health-care providers under those or other provisions of law.

If the arrangement between the health-care provider and the attorney is not consideration for other agreements, and, as long as providing the list to the referred individual does not constitute funneling to the attorney, the referral does not violate Rule 7.03(b). Otherwise, the referral must be refused under Rules 7.03(b) and 7.06.

CONCLUSION

An attorney does not violate Rule 7.03(b) of the Rules if she accepts a referral from a health-care provider who has solicited the referred patient through telemarketing solely for the purpose of providing health care. The committee does not in this instance attempt to decide the legality of the conduct of the health-care provider under the facts presented. The lawyer, however, must not participate in any arrangement with the health-care provider to circumvent Rule 7.03(b).