

**The Supreme Court of Texas
Professional Ethics Committee**

**Opinion Number 561
August 2005**

QUESTION PRESENTED

May a lawyer pay a fee to be listed on a privately sponsored internet site which obtains information over the internet from potential clients about their legal problems and forwards the information to one or more lawyers who have paid to be listed on the internet site?

STATEMENT OF FACTS

A lawyer is considering participating in, registering with and/or subscribing to a privately owned forprofit internet service (the "Internet Service") that encourages lawyers and law firms to list their names and areas of practice so that the Internet Service can assist consumers who desire legal assistance to connect with lawyers who might be available to represent such individuals. The Internet Service charges participating lawyers a fixed monthly or annual fee to subscribe and be listed on the Internet Service. The Internet Service does not receive any share of legal fees that may be generated by a lawyer who is retained as a result of being listed with the Internet Service.

A consumer who desires to utilize the service typically fills out a form on the web page for the Internet Service. The form asks for basic information such as name, address, telephone number, date of incident, and a description of the problem for which the person is seeking legal assistance. The Internet Service then emails the consumer's information to one or more lawyers who have registered with or subscribed to the service so that the lawyer or lawyers can contact the consumer. The Internet Service is not involved in any way in a participating lawyer's providing legal services to a consumer.

DISCUSSION

The Texas Disciplinary Rules of Professional Conduct (the "Rules") contain provisions dealing with advertisements in the public media and participation in lawyer referral services. Effective June 1, 2005, the Rules affecting communications and advertisements pertaining to a lawyer's services were amended. The following portions of the Rules (as amended) are relevant to this opinion: "Rule 7.03 Prohibited Solicitations and Payments...

(b) 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, except that a lawyer may pay reasonable fees for advertising and public relations services rendered in accordance with this Rule and may pay the usual charges of a lawyer referral service that meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952....."

"Rule 7.04 Advertisements in the Public Media

(a) A lawyer shall not advertise in the public media by stating that the lawyer is a specialist, except as permitted under Rule 7.04

(b) or as follows:....

(2) A lawyer may permit his or her name to be listed in lawyer referral service offices that meet the requirements of Occupational Code Title 5, Subtitle B, Chapter 952, according to the areas of law in which the lawyer will accept referrals.

*2 (3) A lawyer available to practice in a particular area of law or legal service may distribute to other lawyers and publish in legal directories and legal newspapers (whether written

or electronic) a listing or an announcement of such availability. The listing shall not contain a false or misleading representation of special competence or experience, but may contain the kind of information that traditionally has been included in such publications.....

(d) Subject to the requirements of Rules 7.02 and 7.03 and of paragraphs (a), (b), and (c) of this Rule, a lawyer may, either directly or through a public relations or advertising representative, advertise services in the public media, such as (but not limited to) a telephone directory, legal directory, newspaper or other periodical, outdoor display, radio, television, the internet, or electronic or digital media.....

(n) A lawyer shall not include in any advertisement in the public media the lawyer's association with a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.....

"Rule 7.06 Prohibited Employment

(a) A lawyer shall not accept or continue employment in a matter when that employment was procured by conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9), engaged in by that lawyer personally or by any other person whom the lawyer ordered, encouraged, or knowingly permitted to engage in such conduct.....

"Rules 7.03 and 7.04 permit a lawyer to pay reasonable fees for advertising and public relations services rendered in accordance with the Rules. Such services, including advertising in public media such as newspapers, telephone directories, or legal directories, do not violate the prohibition in Rule 7.03(b) against paying, giving, or offering to pay or give anything of value to a person not licensed to practice law for soliciting prospective clients. Rule 7.03(b) also provides that a lawyer "may pay the usual charges of a lawyer referral service that meets the requirements of" chapter 952 of subtitle B of title 5 of the Texas Occupations Code, which is known as the Texas Lawyer Referral Service Quality Assurance Act (the "Texas Lawyer Referral Act").

Under section 952.002 of the Texas Lawyer Referral Act, a lawyer referral service is defined to be "...a person or the service provided by the person that refers potential clients to lawyers regardless of whether the person uses the term "referral service" to describe the service provided." A person may not operate a lawyer referral service in Texas unless such person obtains a certificate from the State Bar of Texas. Section 952.101 of the Texas Lawyer Referral Act. To obtain a certificate, the lawyer referral service must, among other requirements, be operated either by a governmental entity or a non-profit entity. Section 952.102 of the Texas Lawyer Referral Act. The Internet Service is not a lawyer referral service meeting the requirements of the Texas Lawyer Referral Act because it is a privately owned, forprofit organization that is not eligible to obtain the required certificate.

*3 Rule 7.03(b) prohibits the payment of a fee by a lawyer to a non-lawyer for soliciting or referring prospective clients to the lawyer but allows payments for advertising and public relations services rendered in accordance with the Rule. In this case, the Internet Service provides lawyers and law firms with an opportunity, in return for payment of a fee, to list their names and areas of practice with the Internet Service so that consumers with legal problems can be connected with lawyers who might be available to represent such individuals. The Internet Service collects information on the internet from a consumer and that person's information and legal issues are then conveyed by the Internet Service to one or more of the lawyers who have registered with or subscribed to the Internet Service by paying a fee. The services provided by the Internet Service are not advertising or public relations services as allowed by Rule 7.03(b). The

Internet Service is instead a service to solicit or refer prospective clients to subscribing lawyers who have paid a fee, and it is thus an arrangement prohibited by Rule 7.03(b).

A defining characteristic of soliciting or referring prospective clients is to ascertain information about a person's legal needs and then match or connect such person with a lawyer who has experience in the area of law appropriate to the legal problem. In general, if an internet site merely provides information about participating lawyers from which a consumer chooses a lawyer or group of lawyers based on the consumer's consideration or evaluation of that information, the site does not solicit or refer prospective clients but rather advertises for the lawyers listed. On the other hand, if an internet site is using information about participating lawyers for the purpose of identifying or selecting a lawyer or group of lawyers whose names are then suggested, offered or recommended to a consumer for consideration, the site is not advertising or providing public relations services but is rather soliciting or referring prospective clients.

CONCLUSION

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer may not pay a fee to be listed on a privately sponsored internet site which obtains information over the internet from potential clients about their legal problems and forwards the information to one or more lawyers who have paid to be listed on the internet site