

Nebraska Ethics Advisory Opinion for Lawyers
No. 81-12

IT IS IMPROPER FOR AN ATTORNEY TO ACCEPT CLIENTS REFERRED BY A SAVINGS AND LOAN ASSOCIATION FOR THE PURPOSE OF PROVIDING THE CLIENT WITH A FREE WILL.

FACTUAL SITUATION

A savings and loan association operates a club which offers membership to any depositor with a balance in excess of a certain amount. The club proposes to approach attorneys who would be interested in providing wills free of charge to its members. The club's involvement would basically be limited to approaching and identifying attorneys who would be interested in engaging in this program and subsequently notifying its members through its regular newsletter of the availability of the service. Presumably, an attorney might be interested in offering this service in the expectation of establishing client contacts or the possibility of representing the estate in any subsequent probate.

QUESTION PRESENTED

May an attorney accept clients referred by a savings and loan association for the purpose of providing the client with a free will?

DISCUSSION

EC 2-8 states:

"Selection of a lawyer by a layman often is the result of the advice and recommendation of third parties - relatives, friends, acquaintances, business associates, or other lawyers. A layman is best served if the recommendation is disinterested and informed. In order that the recommendation

be disinterested, a lawyer should not seek to influence another to recommend his employment. A lawyer should not compensate another person for recommending him, for influencing a prospective client to employ him, or to encourage future recommendations."

DR 2-103 provides in pertinent part:

"Recommendation of Professional Employment

"(A) A lawyer shall not, except as authorized in DR 2-101(B), recommend employment as a private practitioner of himself, his partner, or associate to a layman who has not sought his advice regarding employment of a lawyer.

"(B) 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 the usual and reasonable fees or dues charged by any of the organizations listed in DR 2-103(D).

"(C) A lawyer shall not request a person or organization to recommend or promote the use of his service or those of his partner or associate, or any other lawyer affiliated with him or his firm, as a private practitioner, except as authorized in DR 2-101, and except that

"(1) He may request referrals from a lawyer referral service operated, sponsored, or approved by a bar association and may pay its fees incident thereto.

"(2) He may cooperate with the legal

service activities of any of the offices or organizations enumerated in DR 2-103(D)(1) through (4) and may perform legal services for those to whom he was recommended by it to do such work if:

"(a) The person to whom the recommendation is made is a member or beneficiary of such office or organization; and

"(b) The lawyer remains free to exercise his independent professional judgment on behalf of his client."

The Committee on Ethics and Professional Responsibility of the American Bar Association has issued several informal opinions concerning plans for the referral of prospective clients to lawyers. These opinions illustrate some of the ethical problems arising in such situations.

In informal opinion No. 970, dated November 23, 1966, the ABA Committee ruled that an attorney representing a labor union could not write wills for members of the union without charging for that service. The Committee stated, however, that it would be proper for the union's attorney to draft wills or provide other legal services to union members if they came to him voluntarily, in the same manner as other clients do, and contracted directly with him for his legal services.

In informal opinion No. 1288, dated June 17, 1974, the ABA Committee ruled that it would not be proper for a lawyer to prepare wills for members of the congregation of a church, with the fee for the lawyer's services being paid to the church as a donation. The Committee stated that this arrangement would violate DR 2-103(B) in that the lawyer would be directing the payment of his fee to the church in return for the referral of the client.

In informal opinion No. 1313, dated January 27, 1975, the ABA Committee ruled that a law firm could participate in an arrangement under which a credit union would refer its members to the law firm for legal

services. Payment for the legal services would be made by the individual members of the credit union on the basis of a schedule of charges that the law firm would submit to the credit union for its approval.

In informal opinion No. 1339, dated August 25, 1975, the ABA Committee ruled that it would be proper for attorneys to provide legal services free of charge to the widows and families of policemen and firemen killed in the line of duty. The referral of prospective clients to attorneys was done by an organization created for the purpose of providing financial and other assistance to the widows and families of deceased policemen and firemen. The ABA Committee ruled that the referring organization came within the exemption contained in DR 2-103 (D) (4) .

In informal opinion No. 1352, dated October 31, 1975, the ABA Committee ruled that it would be proper for an organization consisting of a group of lay persons interested in consumer protection to refer prospective clients to lawyers qualified in the field of consumer law and willing to charge fees commensurate with the client's ability to pay. The Committee stated that the fact that the organization making the referrals was a non-profit organization eliminated any potential violation of DR 2-103(C).

In informal opinion No. 1360, dated April 14, 1976, the ABA Committee ruled that it would be proper for a non-profit organization to refer artists and art organizations to lawyers willing to provide legal services free of charge to indigent artists. The Committee stated that the proposed plan did not violate DR 2-101 or Dr 2-103(D)(4).

In informal opinion No. 1438, dated June 6, 1979, the ABA Committee ruled that it would be proper for an employee organization to refer members of the organization to a particular law firm, which would be compensated on an individual basis by the person utilizing the law firm's services. The Committee stated that the proposed referral plan did not violate any provision of the Model Code of Professional

Responsibility.

In addition to the foregoing opinions of the ABA Committee, two prior opinions of this committee are of some interest in connection with the question under consideration. They are [Opinion No. 73-3](#) and [Opinion No. 76-12](#).

After reviewing the applicable disciplinary rules, the opinions of the ABA Committee on Ethics and Professional Responsibility, and the prior opinions of this committee, this committee has concluded that the proposed referral plan of the savings and loan association would violate DR 2-103(B). The violation arises by virtue of the fact that a lawyer taking part in the proposed referral plan would be giving to the savings and loan association something of value in return for the association's recommendation of him; that is, the association would acquire the capability to attract depositors by means of the inducement of free legal services.

In some of the opinions rendered by the ABA Committee, it is true that lawyers agreed to render services free of charge to certain classes of persons; but in the instances in which the plans were approved by the ABA Committee, the organizations making the referrals were not attempting to derive any financial advantage from the referral plan. In the present case, on the other hand, the savings and loan association would be using the donated services of the lawyers to attract depositors.