



Committee on Professional Ethics

Opinion #297 - 6/25/73 (23-73) Topic: Legal referral plan sponsored by union.

Modified by 416

Digest: A lawyer may participate in a union legal service program under which a union may recommend to its members the employment of the lawyer in connection with workmen's compensation claims.

Code: EC 2-15;
DR 2-103(D) (5)

QUESTION

May a lawyer ethically participate in a union legal service program under which a union recommends his employment to its members in connection with workmen's compensation claims?

OPINION

An industrial plant has employees who reside throughout a two county area. Hearings with respect to workmen's compensation claims are held at several different locations within the two county area. A union that represents employees working at the plant proposes to arrange with one or more lawyers or firms of lawyers that it will recommend to its members employment of such lawyer or firm in connection with workmen's compensation claims where the hearings are to be held at the place where the lawyer or firm practices. The union members would be free to disregard the recommendation and select any other attorney to represent them. The union would not make any payments of fees or expenses to the recommended firm, no payment would be made by the firm to the union and the firm's fee for services performed in connection with the workmen's compensation claim would be subject to approval by the Workmen's Compensation Commission and would be payable out of the award made to the union claimant. It is assumed that the firm could decline a particular case or matter, though in general it would be contemplated that it would act for the union members who came to it.

EC 2-15 deals primarily with lawyer referral systems developed by the legal profession. However, it also states "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." DR 2-103(D) reads in part:

"DR 2-103 Recommendation of Professional Employment

* * * *

"(D) A lawyer shall not knowingly assist a person or organization that recommends, furnishes, or pays for legal services to promote the use of his services or

OVER---

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #297

-2-

those of his partners or associates. However, he may cooperate in a dignified manner with the legal service activities of any of the following, provided that his independent professional judgment is exercised in behalf of his client without interference or control by any organization or other person:

* * * *

- (5) Any other non-profit organization that recommends, furnishes, or pays for legal services to its members or beneficiaries, but only in those instances and to the extent that controlling constitutional interpretation at the time of the rendition of the services requires the allowance of such legal service activities, and only if the following conditions, unless prohibited by such interpretation, are met:
- (a) The primary purposes of such organization do not include the rendition of legal services.
 - (b) The recommending, furnishing, or paying for legal services to its members is incidental and reasonably related to the primary purposes of such organization.
 - (c) Such organization does not derive a financial benefit from the rendition of legal services by the lawyer.
 - (d) The member or beneficiary for whom the legal services are rendered, and not such organization, is recognized as the client of the lawyer in that matter."

The Supreme Court has twice considered the referral or recommendation plan of the United Transportation Union, formerly Brotherhood of Railroad Trainmen. U.T.U. v. State Bar of Michigan, 401 U.S. 576 (1971); Brotherhood of Railroad Trainmen v. Virginia State Bar, 377 U.S. 1 (1964); see also, United Mine Workers v. Illinois State Bar Assn., 389 U.S. 217 (1967) and NAACP v. Button, 371 U.S. 415 (1963). The trainmen's plan and recommendation of regional counsel was approved as constitutionally protected under the First Amendment of the United State Constitution.

In ABA Inf. 1237 (1972) a lawyer referral system for union members operated through a panel consisting of a union official, a lawyer and a member of the public chosen by the union representative and lawyers on the referral panel was found not to be improper.

The referral or recommendation plan now presented because it is related to the union member's relationship to his employer is an appropriate one to aid in the selection of qualified counsel within the meaning of EC 2-15, DR 2-103(D)(5). In view of the Supreme Court decisions referred to above, DR 2-103(D)(5) does not prohibit the

OVER---

**NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion**

Opinion #297

-3-

proposed activity and the acceptance of employment by the recommended firm. Cf. N.Y. State 76 (1968); N.Y. State 163 (1970).
