

NEW YORK STATE BAR ASSOCIATION
Committee on Professional Ethics

Opinion 691 - 6/10/97 (5-97)

Topic: Charitable donation to non-profit organization that refers attorneys to clients

Digest: Attorney may make charitable donation to organization that provides referrals if donation is not compensation for referral.

Code: DR 2-103(B) and (D).

QUESTION

May an attorney make a charitable donation to a non-profit organization that provides prospective clients with a referral list of attorneys who perform work in the organization's area of concern?

OPINION

It is generally appropriate for a lawyer to make a donation to a non-profit organization that provides a referral list of attorneys, as such conduct is consistent with Canon 2's duty to make legal counsel available. See EC 2-1 (an important function of the legal profession is to "assist in making legal services fully available"); EC 2-15 ("Lawyers should support the principle of lawyer referral systems"); N.Y. State 651 (1993) ("Permitting lawyers to contribute to the administrative expenses of a nonprofit lawyer referral service is consistent with the spirit of Canon 2...."); N.Y. City 94-3 (accord). This opinion addresses the question whether it is appropriate for a lawyer to make such a donation in circumstances where the attorney is included on the referral list, has received referrals in the past and expects to receive referrals in the future.

DR 2-103 governs the solicitation and recommendation for employment of attorneys. DR 2-103(B) provides as follows:

A lawyer shall not compensate or give anything of value to a person or organization to recommend or obtain employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except by any of the organizations listed in DR 2-103(D).

Thus, DR 2-103(B) contains a general proscription against paying for referrals or recommendations, but excludes from this proscription the organizations described in DR 2-103(D). That section in turn describes the qualifying organizations to include a legal aid or public defender office, a military assistance office, a lawyer referral service "operated, sponsored or approved by a bar association", and any "bona fide organization which recommends, furnishes or pays for legal services to its members or beneficiaries" provided that certain conditions are satisfied. DR 2-103 does not address whether a lawyer may give a charitable donation to an organization that provides referrals but is not an organization identified in DR 2-103(D).

A donation to such a non-DR 2-103(D)-qualified entity by an attorney included on that entity's referral list could be viewed as compensation, or giving something of value, in exchange for obtaining referrals, particularly if the donating attorney has received referrals from the organization in the past. Nonetheless, since there is no specific prohibition against charitable donations of this nature in DR 2-103 or elsewhere in the Code, and in view of the salutary purpose of the organization, such a donation should be permitted as long as it is clearly intended to be charitable and is not pursuant to a tacit arrangement of compensation in exchange for referrals. *Cf. In re Fisher*, 174 A.D. 2d 236, 580 N.Y.S.2d 228 (1st Dep't 1992) (payment of \$1000 to director of bar association legal referral service constituted unlawful attempt to influence service in violation of DR 2-103[B]); Illinois Opinion 827 (1983) (voluntary contribution to tenant organization that refers members' claims would not violate proscription against giving anything of value for referrals unless contributions are made periodically); Ohio Opinion Op. 91-19 (improper for lawyer providing pro bono legal services to non-profit agency to make periodic voluntary contributions while receiving referrals from agency).

Finally, EC 9-6 counsels that a lawyer has a duty "to uphold the integrity and honor of the profession . . . and to strive to avoid not only professional impropriety but also the appearance of impropriety." If the donation is made with charitable intent, it should not have the appearance of impropriety.

CONCLUSION

The question is answered in the affirmative subject to the conditions described in this opinion.
