

New York State Bar Association

Committee on Professional Ethics

Opinion 791 – 2/1/06

Topic: Referrals and solicitation.

Amplifies: N.Y. State 741 (2001)

Digest: A lawyer may not participate in an organization that requires the lawyer to refer potential clients or customers to other lawyers or to nonlawyer members in exchange for their referral of legal business, or charges membership fees and other fees and requires nonlawyer members to refer potential clients to the lawyer.

Code: DR 2-103(B)

1. We have been asked to reconsider N.Y. State 741 (2001), in which we concluded: “A lawyer may not participate in a business networking organization that requires the lawyer to refer clients to other members in exchange for their referral of legal business.” This opinion reaffirms and expands on N.Y. State 741.

FACTS

2. The inquiring attorney belongs to a local chapter of a business networking organization. The organization requires members generally to bring referrals or visitors to the chapter meetings, and permits local chapters to set a minimum number of referrals or visitors. The inquirer states, however, that, unlike the business networking organization discussed in N.Y. State 741, her chapter does not require lawyers to refer clients to other members in exchange for their referral of legal business. In addition, the policies of the organization to which the inquirer belongs provide that professional standards outlined in a formal code of ethics supersede the organization’s policies.

3. In exchange for the privilege of membership in the local chapter, a member pays three fees: (1) an “initial registration fee” that goes to the national umbrella organization; (2) an “annual fee” whose purpose is not specified; and (3) an occasional “monthly fee” that is used to pay for working space and breakfast.

OPINION

A. The Continued Viability of N.Y. State 741.

4. After reviewing and reconsidering N.Y. State 741 (2001), we continue to believe that its reasoning is sound and its conclusion is correct. A lawyer may not participate in a business networking organization that requires the lawyer to refer clients to other members in exchange for their referral of legal business, and that conclusion is correct whether or not the organization charges the lawyer any membership fees or other fees.

5. While the inquirer’s chapter does not require a lawyer to make referrals to the other members, we believe that an attorney’s participation in that chapter would violate DR 2-103(B) of the New York Code of Professional Responsibility because it requires nonlawyer members to make referrals to the lawyer. Even if professional standards in a formal code of ethics (such as the New York Code of Professional Responsibility) supersede the organization’s policies for lawyers, we have no indication that similar professional standards governing the various nonlawyer members of the local chapter would supersede their mandate to bring referrals to other chapter members.

6. In effect, by paying the initial registration fee and the annual fee, the lawyer is paying for referrals. We briefly addressed that aspect of the organization at issue in N.Y. State 741. We will elaborate on that aspect here.

B. The Relevance of DR 2-103(B).

7. 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 that:

1. A lawyer or law firm may refer clients to a nonlegal professional or nonlegal professional service firm pursuant to a contractual relationship with such nonlegal professional or nonlegal professional service firm to provide legal and other professional services on a systematic and continuous basis as permitted by DR 1-107, provided however that such referral shall not otherwise include any monetary or other tangible consideration or reward for such, or the sharing of legal fees; or
2. A lawyer may pay the usual and reasonable fees or dues charged by a qualified legal assistance organization or referral fees to another lawyer as permitted by DR 2-107.

8. In our view, the policies and fees of the networking organization violate DR 2-103(B). A lawyer who pays to join and maintain membership in the organization is giving something of value to the organization, and is giving that value knowing that membership will, at least in part, generate recommendations by other members that may lead to employment of the lawyer by new clients. A lawyer may not pay dues to an organization that requires its members to refer potential clients to the lawyer.

9. The exceptions to DR 2-103(B) do not apply, for the reasons set forth below.

10. The networking organization does not fit within the exception in DR 2-103(B)(1), because the organization does not constitute a “contractual relationship” with nonlegal professionals pursuant to DR 1-107. Even if the networking organization qualified as a “contractual relationship” under DR 1-107, it would not satisfy the exception in DR 2-103(B)(1) because members must pay “monetary or other tangible consideration” (*i.e.*, the initial and annual fees) to generate referrals, which violates the “provided however” clause of DR 2-103(B)(1).

11. The networking organization also does not fit within the exception in DR 2-103(B)(2), because the organization is not a “qualified legal assistance organization.” That term is defined in the Definitions section of the New York Code of Professional Responsibility as “an office or organization of one of the four types listed in DR 2-103(D)(1) through (4), inclusive, that meets all of the requirements thereof. The four types listed in DR 2-103(D)(1)-(4) are: (1) a legal aid office or public defender office, (2) a military legal assistance office, (3) a lawyer referral service, or (4) an organization that recommends, furnishes, or pays for legal services to its members or beneficiaries. The networking organization is not any of these types.

12. Nor does the payment to the networking organization satisfy the test of the final clause of the exception in DR 2-103(B)(2), “referral fees to another lawyer as permitted by DR 2-107.” We are not talking here about referrals arrangements between lawyers in different firms, which present very different issues from referral arrangements between lawyers and nonlawyers.

CONCLUSION

13. Upon reconsideration, we adhere to our opinion in N.Y. State 741 (2001), which concluded that a lawyer may not participate in a business networking organization that requires the lawyer to refer clients to other members in exchange for their referral of legal business, whether or not the organization charges the lawyer any fees. We add here that a lawyer also may not participate in a business networking organization that charges membership dues and/or other fees and requires nonlawyer members to refer potential clients to members of the organization who are lawyers.

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