



NEW YORK STATE BAR ASSOCIATION

One Elk Street, Albany, New York 12207 □ PH 518.463.3200 □ www.nysba.org

New York State Bar Association Committee on Professional Ethics

Opinion 981 (10/2/13)

Topic: Payment to lawyer of referral fee for clients who sign up for a security system.

Digest: A lawyer may receive a referral fee under certain circumstances.

Rules: 1.7, 5.4

FACTS

1. The inquirer, whose legal practice is predominantly residential real estate, has been approached by a company which provides home security services. The company has offered to pay a referral fee of \$150.00 for each person who procures security services using a code on flyers placed in the lawyer's office. It is assumed that the attorney is not recommending these services and that the services are not substantially related to the legal services being provided by the attorney to the person who procures the services.

QUESTION

2. Can the attorney accept a referral fee from the home security company?

DISCUSSION

3. There are a number of opinions which discuss whether it is appropriate for a lawyer to receive a referral fee for referring a client to a service particular provider.¹ In each of these opinions the service provider was related in some way to the legal services being provided by the lawyer to the client.

¹ See for example: N.Y. State 667 (1994) where it was opined that a lawyer could receive an referral fee from a mortgage broker provided certain conditions were met; Nassau County 2001-10 where a real estate lawyer could receive a referral fee from a termite treatment company; N.Y. State 461 (2007) which permitted a lawyer to receive a portion of a commission from a fire adjuster; N.Y. State 845 (2010) which permitted a real estate broker to share her commission with lawyers who refer buyers or sellers to her; D.C. Opinion 361 (2011) permitted a referral fee; Arizona Opinions 95-10 (1995) and 06-02 (2006) both of which prohibited referral fees. All of the opinions turned on an analysis of Rule 1.7 (or its predecessor) to determine whether such a referral fee created a conflict of interest between the lawyer receiving compensation and the obligation of the lawyer to make a referral which was in the client's best interest.

4. Here, in contrast, the nature of the service provider (home security services) is not related to the legal services to be provided by the lawyer. These flyers would be available to anyone who passed through the lawyer's waiting room, including clients, delivery persons and individuals who might accompany clients to the lawyer's office. The lawyer is expressing no opinion regarding the quality or suitability of the services. He is merely providing space for the flyers for collection by anyone who might have an interest in a security system. Nothing in the Rules of Professional Conduct prohibits a lawyer from being compensated for providing passive space for advertisement by third parties.

5. However, should the lawyer recommend the services, or should the non-legal services be related to the legal services provided by the lawyer, the opinions in footnote 1 should be carefully considered before proceeding.

CONCLUSION

6. A lawyer may receive a referral fee from a home security firm which places flyers in the lawyer's office.

(5-13)