



**New York State Bar Association
Committee on Professional Ethics**

Opinion 1267 (06/14/2024)

Topic: Paying for a recommendation or referral.

Digest: A website that promises to connect potential clients with attorneys whom the website claims have excellent qualifications and are carefully vetted, constitutes an “advertisement” on behalf of the lawyers available through the website (see Rule 1.0(a) and Rule 7.1), and the lawyers’ payment to the business providing this service constitutes an improper payment for a recommendation in violation of Rule 7.2(a). The inquirer’s operation of the website, in turn, violates Rule 8.4(a) because it induces this misconduct by the lawyers who offer their services.

Rule: 1.0(a), 7.1(a), (f), &(h), 7.2(a), 8.4(a).

FACTS:

1. The inquirer is a lawyer who is a part owner of a business that connects potential clients with attorneys. The connection between the potential clients and the attorneys occurs either when a potential client either (i) texts a specified number provided by the business’s website or (ii) clicks on a chat box on the website. The website then instructs the potential client to select the area of law in which the individual needs assistance. In return, the website represents that the potential client will be linked directly with a lawyer in the relevant area of law with “excellent qualifications. The website promises to match the potential clients with lawyers who have strong reputations in the appropriate area of law. The website also assures potential clients that the website carefully vets the attorneys in the website’s network and connects people with top-flight attorneys. Lawyers who wish to participate in this service pay a fee to the business operating the service.

2. The inquirer asks whether the website is required to state on its home page that it is “Attorney advertising.” The business model described in the inquiry also raises issues about whether it involves a payment for a recommendation.

QUESTIONS:

3. Does the inquirer’s website constitute an “advertisement” on behalf of the participating lawyers that is governed by the Rules’ advertising guidelines?

4. Do payments from participating lawyers to the business in exchange for being listed on the website constitute an impermissible payment for a recommendation?

OPINION:

5. As a threshold matter, this opinion does not address whether the business implicates §495(1)(d) of the Judiciary Law, which prohibits a corporation from “furnish[ing] attorneys or counsel” as that is a question of law beyond our committee’s jurisdiction.

Advertising and Required Disclosures

6. Rule 7.1 governs lawyer advertisements. Rule 1.0(a) defines “advertisement” for purposes of the various regulations on advertising contained in the Rules. Rule 1.0(a) provides:

“Advertisement” means any public or private communication made by or on behalf of a lawyer or law firm about that lawyer or law firm’s services, the primary purpose of which is for the retention of the lawyer or law firm. It does not include communications to existing clients or other lawyers.

Here, because the lawyers pay for the privilege of participating in the website, the business’s website is a communication “on behalf of” the lawyers participating in the website’s service for the “primary purpose” of retention of the lawyers by potential clients. The website is therefore an “advertisement” within the meaning of Rule 1.0(a). See N.Y. State 1132 (2017) (website of business that markets the services of participating lawyers is an “advertisement” governed by the Rules); N.Y. State 1131 (2017) (website on which potential clients provide their contact information and agree to be contacted by participating lawyers is an “advertisement” by or on behalf of the lawyers and is subject to the Rules advertising regulations).

7. Rule 7.1(a) prohibits a lawyer from participating in an advertisement that “(1) contains statements or claims that are false, deceptive or misleading or (2) violates a Rule.” Rule 7.1 also requires that certain advertisements contain prescribed disclosures, such as the label “Attorney Advertising,” and information about the lawyer or lawyers whose services are advertised. See Rules 7.1(f), 7.1(h); N.Y. State 1131. Even though the business, not the participating lawyers, creates and disseminates the business’s website, each participating lawyer is taking part in this advertising and therefore has a duty to ensure that the content of the website follows Rule 7.1’s prescriptions.

8. Rule 7.1(h) requires that “[a]ll advertisements shall include the name, principal law office and telephone number of the lawyer or law firm whose services are being offered.” We have previously determined that lawyers may not engage in advertising on the internet, including group advertising, without complying with Rule 7.1(h). See N.Y. State 1131, N.Y. State 839 (2010).

Referrals and Referral Fees

9. Rule 7.2(a) states that 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” The Rule contains three exceptions that are not relevant to this inquiry: (1) referrals without monetary rewards, which are permitted by Rule 5.8, (2) referrals to another lawyer, which are permitted by Rule 1.5(g), and (3) referrals by a qualified legal assistance organization, which are permitted by Rule 7.2(b). The first exception is inapplicable because, among other things, the website receives monetary rewards from the participating lawyers. The second exception only applies to situations where a lawyer is dividing a fee for legal services. And the third exception does not apply because the website here does not constitute a “qualified legal assistance organization” as defined in Rule 1.0(p) (“an office or

organization of one of the four types listed in Rule 7.2(b)(1)-(4) that meets all of the requirements thereof”).

10. Since the business that is the subject of this inquiry does not qualify for any of the Rule 7.2(a) exceptions, the dispositive question is whether the participating lawyers are paying the business to “recommend” the participating lawyers or to obtain employment of the participating lawyers by clients. See N.Y. State 1131. Guidance is contained in portions of Comment [1] to Rule 7.2, which was amended in 2015 to illustrate how the prohibition on paying for referrals or employment applies to paying for client leads. In relevant part, Comment [1] states that:

[A] lawyer may pay others for generating leads, such as Internet-based client leads, as long as . . . the lead generator does not recommend the lawyers. . . . To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, or making the referral without payment from the lawyer, or has analyzed a person’s legal problems when determining which lawyer should receive the referral. [Emphasis added.]

Comment [1] to Rule 7.2, includes the following definition of the term “recommendation”:

A communication contains a recommendation if it endorses or vouches for a lawyer’s credentials, abilities, competence, character, or other professional qualities.

Moreover, as we observed in N.Y. State 1131 ¶ 20 (2017), to “recommend” also includes identifying a specific lawyer or lawyers to a potential client as “a right” or the “the right” lawyer for the client’s situation following an analysis of the client’s legal problem. See also N.Y. State 799 (2007) (“For example, if a potential client describes a slip-and-fall incident on an intake form and the website determines that the problem calls for a personal injury lawyer and then recommends one or more attorneys in that area, the website is “recommending” those lawyers”).

11. Here, it is difficult to escape the conclusion that the language contained on the business’s website creates the impression that the business is indeed recommending the participating lawyers. The website represents that the potential client will be linked with a lawyer in the relevant area of law with excellent qualifications. The website promises to offer lawyers with strong reputations in the appropriate area of law. The website also assures potential clients that they carefully vet the attorneys in their network and match people with top-flight attorneys. The most reasonable inference to be drawn from that representation is that the business has engaged in a substantive review of the lawyers’ work and determined that they have excellent qualifications in their areas of practice. See N.Y. State 1132 (although Avvo claimed on its website that its rating did not constitute an endorsement of any particular lawyer, Avvo’s use of a rating system together with its statement that Avvo worked only with “highly qualified lawyers” created the impression that it was “recommending” the participating lawyers).

12. In the inquiry before us, the website’s explicit claim that it uses a review process aimed at finding the lawyers who deliver a high level of service constitutes a substantive recommendation. Cf. N.Y. State 1131 (a business that accepts only participating lawyers who are in good standing in their jurisdiction would not render the business’s selection of a lawyer a recommendation if it uses neutral, non-qualitative criteria); N.J. Committee on Attorney Advertising Op. 2004-1 (lawyer

may pay flat fee to internet marketing company for an exclusive website listing for a particular location in specific practice area if the listing includes a prominent, clear disclaimer indicating that listings are not endorsements); Arizona Op. 11-02 (internet advertisement listing one lawyer for each zip code are acceptable where an advertisement does not imply that the website listing is an endorsement).

13. Because lawyers participating in the website are violating Rule 7.2(a) by paying for recommendations, the inquirer's operation of the website violates Rule 8.4(a), which forbids a lawyer to "induce another" to violate the Rules of Professional Conduct. In our view, the website induces unwary lawyers to violate the Rules by paying for recommendations.

CONCLUSION:

14. A website that promises to connect potential clients with attorneys whom the website claims have excellent qualifications and are carefully vetted, constitutes an "advertisement" on behalf of the lawyers available through the website (see Rule 1.0(a) and Rule 7.1), and the lawyers' payment to the business providing this service constitutes an improper payment for a recommendation in violation of Rule 7.2(a). The inquirer's operation of the website, in turn, violates Rule 8.4(a) because it induces this misconduct by the lawyers who offer their services.

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