

FORMAL OPINION NO. 114

The Committee has received a request for an opinion regarding the propriety of a lawyer participating in a private attorney referral service under the following circumstances. The referral service, which is neither sanctioned nor sponsored by the State Bar Association, charges the attorney a fee to become part of a pool of attorneys. The referral service then places advertisements in newspapers and telephone directories stating, in effect, that the referral service will help the consumer select an attorney experienced in handling the consumer's problem. The attorney apparently has no control over the content or method of public advertising.

The issue presented is whether this conduct is an impermissible form of solicitation.

The applicable disciplinary rule is DR 2-103(C) which provides:

"A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client or as a reward for having made a recommendation resulting in his employment by a client, except that he may pay for public communications permitted by DR 2-101, and the usual and reasonable fees or dues charged by a lawyer referral service operated, sponsored or approved by a bar association."

DR 2-103(C) clearly prohibits the practice set forth above. First, the rule states that a lawyer "shall not compensate or give anything of value to . . . organization to recommend or secure his employment by a client . . .". Second, the rule provides that a lawyer may pay fees or dues charged by a lawyer referral service only if the service is operated, sponsored or approved by a bar association.

Thus, unless the referral service is either operated, sponsored or approved by the bar association, a lawyer may not pay a fee to the referral service, and participation therein constitutes prohibited solicitation.

DATED this 18 day of July, 1983.

COMMITTEE ON ETHICS AND  
PROFESSIONAL RESPONSIBILITY OF  
THE IDAHO STATE BAR

  
Alfred C. Hagan, Chairman

  
Frank E. Chalfant, Jr.

  
Dean J. Miller