



## Committee on Professional Ethics

Opinion #416 - 10/8/75 (73-75)

Modifies #76, 80, 98, 163,  
172, 297, 309

Topic: Group legal service plans;  
labor union legal service  
plan.

Digest: Guidelines generally  
applicable to group legal  
service plans; guidelines  
applicable to labor union  
legal service plans.

Code: EC 2-33  
DR 2-101(B), 2-103, 2-103(B),  
(C),(D), 2-104(A)(3).

### QUESTIONS

1. What general guidelines are applicable to lawyers cooperating with an organization sponsoring a group legal service plan or accepting professional employment under such a plan?

2. What guidelines are applicable to union sponsored group legal service plans to provide legal service for union members?

### OPINION

1. Effective April 19, 1975, the New York State Bar Association adopted a series of liberalizing amendments to the Code, relating to lawyer participation in group legal service plans sponsored by offices and organizations that recommend, furnish or pay for legal services to their members or beneficiaries. Such offices and organizations are referred to in the amendments as "qualified legal assistance organizations", and include specified legal aid and public defender offices, military assistance offices, lawyer referral services operated, sponsored, or approved by a bar association, and any "bona fide organization that recommends, furnishes or pays for legal services to its members or beneficiaries, provided [specified] conditions are satisfied". These amendments made substantial modifications to DR 2-101(B), DR 2-103 and DR 2-104(A)(3), and added a new EC 2-33 and two new definitions (7) and (8) to the Code's definition provisions. All of these amendments had previously been adopted by the American Bar Association, effective February 24, 1975.

New EC 2-33 provides, inter alia:

"As a part of the legal profession's commitment to the principle that high quality legal services should be available to all, attorneys are encouraged to cooperate with qualified legal assistance organizations providing prepaid legal services. Such participation should at all times be in accordance with the basic tenets of the profession: independence, integrity, competence and devotion to the interests of individual clients."

The three amended Disciplinary Rules spell out in detail the requirements applicable to lawyer participation in group legal service plans, and the conditions to which such plans are subject. Every lawyer who undertakes to provide legal service under any such plan should carefully review the provisions of these Disciplinary Rules, so as to satisfy himself that all applicable requirements and conditions are fully complied with. He should also satisfy himself that the plan is not violative of any applicable statutory or other legal requirements, such as those found in Section 495 of the Judiciary Law.

The requirements of the 1975 amendments fall into three categories: (A) those applicable to all group legal service programs; (B) those applicable to all group legal service programs other than those of certain legal aid or public defender offices, military assistance offices or bar association operated, sponsored or approved legal referral services; and (C) those applicable only to programs where the organization which "recommends, furnishes or pays for legal services" is "organized for profit".

A. Every lawyer cooperating with the legal service activities of any sponsoring organization or accepting professional employment under any kind of group legal service plan, including legal aid, public defender, military assistance or bar association sponsored or approved legal referral plans, is subject to the following provisions:

- a. He may 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 the usual and reasonable fees or dues charged by" the sponsoring organization. DR 2-103(B), as amended.
- b. He may not "request" any "person or organization to recommend or promote the use of his services or those of his partner or associate, or any other lawyer affiliated with him or his firm, as a private practitioner", except that he may request referrals from a lawyer referral service operated, sponsored or approved by a bar association. DR 2-103 (C)(1), as amended.
- c. He may only accept as clients on the recommendation of the organization those who are organization members or beneficiaries. DR 2-103(C)(2)(a), as amended.
- d. He may only accept and serve such clients if he "remains free to exercise his independent professional judgment" and "if there is no interference with the exercise of independent professional judgment" on behalf of each client. DR 2-103(C)(2)(b), as amended, and DR 2-103(D), as amended.

B. The following additional requirements and conditions found in DR 2-103(D)(4), as amended, are applicable to any "bona fide organization that recommends, furnishes or pays for legal services to its members or beneficiaries", whether or not the organization is "organized for profit", other than certain legal aid or public defender offices, military assistance offices, or bar association operated, sponsored or approved lawyer referral offices.

- a. The organization derives no profit from the rendition of legal services by lawyers.
- b. The organization shall not have been initiated or promoted "for the primary purpose of providing financial or other benefit to [a participating] lawyer, [or to any lawyer who is his] partner, associate or affiliated lawyer".
- c. The organization is "not operated for the purpose of procuring legal work or financial benefit for any lawyer as a private practitioner outside of the legal services program of the organization".
- d. The member or beneficiary to whom the legal services are furnished, and not such organization, is recognized as the client of the lawyer.
- e. Any member or beneficiary entitled to legal service under the plan is free, if he so desires for any particular matter, to select counsel "other than that furnished, selected or approved by the organization". The plan must also provide "appropriate relief for any member or beneficiary who asserts a claim that representation by counsel furnished, selected or approved would be unethical, improper or inadequate under the circumstances of the matter involved and... an appropriate procedure for seeking such relief".
- f. The lawyer does not know or have cause to know that such organization is in violation of any "applicable laws, rules of court and other legal requirements that govern its legal service operations".
- g. The organization is required to file "with the appropriate disciplinary authority at least annually a report with respect to its legal service plan,... showing its terms, its schedule of benefits, its subscription charges, agreements with counsel, and financial results of its legal service activities". If it should fail to do so, the lawyer must not know or have cause to know of such failure.

C. If the organization that recommends, furnishes or pays for legal services is organized for profit, legal services may not be rendered by "lawyers employed, directed, supervised or selected"

by the organization "except in connection with matters where such organization bears ultimate liability of its member or beneficiary" (e.g.: an insurance company). DR 2-103(D)(4)(a), as amended.

Organizations that comply with the requirements and conditions above mentioned are permitted by the amendments to use certain "means of dignified commercial publicity" and to send "communications" that include limited biographical information concerning a lawyer "directed to a member or beneficiary of such organization". DR 2-101(B), as amended.

2. Group legal service plans sponsored by a labor union must meet all of the above summarized requirements, except for the requirement set forth in paragraph "C" above, which applies only to plans sponsored by organizations "organized for profit". We assume that the union is in fact a "bona fide" non-profit organization. See DR 2-103(D)(4), as amended.

(It should be noted that N.Y. State 76 (1968), N.Y. State 80 (1968), N.Y. State 98 (1969), N.Y. State 163 (1970), N.Y. State 172 (1970), N.Y. State 297 (1973), and N.Y. State 309 (1973) were all decided prior to the adoption of the 1975 Code amendments. To the extent that these prior opinions are inconsistent with the provisions of the 1975 amendments, they are hereby modified.)

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