



**NEW YORK STATE BAR ASSOCIATION**

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**Committee on Professional Ethics**

**Opinion 590 - 4/7/88 (6-88)**

Topic: Lawyer referral service.

Digest: Not improper for an attorney to serve on a lawyer referral service committee and receive referrals where referrals are made by the staff on a rotating basis.

Code: DR 2-103(C), 2-103(C)(1),  
5-101(A);  
EC 2-8;  
Canon 9.

**QUESTION**

May an attorney serve on a lawyer referral service committee and receive referrals made by the staff where the referrals are made to lawyers on an open panel on a rotating basis?

**OPINION**

The Committee on Lawyer Referral Service (the "Service") has proposed an amendment to the New York State Bar Association Lawyer Referral and Information Service Plan (the "Plan") so as to delete the provision of Article III of the Plan that states:

"During any committee member's term neither the member nor any attorney associated with the member in practice will receive referrals from the Service."

In 1976, this Committee determined that the referral of a matter to a lawyer associated with the administration of a lawyer referral service and to members or associates the lawyer's firm is improper. N. Y. State 426 (1976). That opinion is founded upon DR 2-103(C) and our belief that a referral in such circumstances is not "bona-fide" within the meaning of the exception stated in DR 2-103(C)(1). We believe further that such a referral implicates

the conflict of interest provisions of DR 5-101(A) and the general prohibition of Canon 9 against the appearance of impropriety (*i.e.*, here, self-dealing).

The Plan about which the Service has inquired, provides, however, in Article IV:

“The Service will be operated from The Bar Center in Albany, utilizing members of the staff, under the general supervision of the Committee. A person seeking a lawyer who contacts the Service will be interviewed by a staff member and a referral will be made to a participant-member of the Service on a rotating basis.”

We conclude that where the Lawyer Referral Committee isolates itself, as it does in the Plan, from the actual assignment of cases, the provisions of N.Y. State 426 (1976) are inapplicable as the prohibition described in such opinion is directed to the actual administration of the lawyer referral service.

The role of the Lawyer Referral Committee under the Plan should be considered analogous to the function of a board of directors or board of trustees implicitly permitted under N.Y. State 490 (1978). Where the Lawyer Referral Committee formulates broad organization policy and does not concern itself with the referral of cases or other aspects of day-to-day administration, it will be deemed too remote to influence referral of cases to its members, at least, as here, where the staff makes the assignment of referrals to lawyers on an open panel on a rotating basis. *Accord*, Arizona Op. 76-13 (1976), indexed in Maru's Digest No. 10422 (1980). As we stated in N.Y. State 490 (1978), “To whatever extent practicable, and consistent with the board's proper interest in seeing that its policies are implemented, the board should be isolated from the day-to-day operations of a legal staff, and more particularly, the staff's handling of specific cases.” The Plan meets this standard with respect to the Lawyer Referral Committee.

In reaching the conclusion set forth above that N.Y. State 426 (1976) is not applicable to the Plan, as it is proposed to be amended, we have not relied upon the changes in EC 2-8 adopted in the wake of *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).

For the reasons stated, the question is answered in the affirmative.

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