

# New York State Bar Association

## Committee on Professional Ethics

Opinion 741 – 5/25/01

Topic: Referrals; solicitation.

Digest: Lawyer may not participate in a business network that requires reciprocal referrals.

Code: DR 1-102(A)(2), 2-103(A), (B), 5-101(A), 6-101(A).

### QUESTION

May an attorney ethically participate in a business network that requires members to refer clients to and to accept referrals from other network members?

### OPINION

An attorney wishes to join the local chapter of a business networking organization. Material distributed by the organization indicates that there is a one-time registration fee of \$50 as well as annual dues of \$240. Only one person from each profession may join a local chapter. The purpose of the organization is to promote networking in order to increase business through marketing. To that end, members attend weekly meetings, receive newsletters, and refer business to each other.

Several aspects of a lawyer's participation in the organization present ethical issues. The first is that an attorney participating in the organization is apparently required to refer clients to other members of the organization. Membership in the organization requires a member to follow its policies, including the following: "Participants are required to bring bona-fide referrals and/or visitors to their chapter." The organization's Code of Ethics states: "I will take responsibility for following up on the referrals I receive."

When an attorney's clients seek advice as to the hiring of a real estate broker or an insurance agent, the client should be able to rely on the attorney's independent advice in making a recommendation. The organization's policies, however, would require the attorney to refer the client to the real estate broker or insurance agent who is a member of the organization. Thus, the attorney's personal interests may affect his or

her professional judgment. It may be that, with respect to a specific client, the attorney would have referred the client to a broker or agent other than the one who has joined the organization.

The obligation to make referrals to members of the organization creates a conflict of interest under DR 5-101(A), which provides:

A lawyer shall not accept or continue employment if the exercise of professional judgment on behalf of the client will be or reasonably may be affected by the lawyer's own financial, business, property, or personal interests, unless a disinterested lawyer would believe that the representation of the client will not be adversely affected thereby, and the client consents to the representation after full disclosure of the implication's of the lawyer's interest.

When a client seeks the attorney's professional advice with respect to a referral, the attorney may properly refer the client to a member of the organization only if the client is informed as to the attorney's membership in the organization and the obligation to refer the client to another member of the organization. See Nassau County Op. 97-8 (1997) (attorney may agree to refer clients to a medical group provided it is in the client's best interests of the client consents after full disclosure).

Second, we interpret the provision in the policies together with the provision in the organization's Code of Ethics to mean that if another member of the organization has a client who needs legal assistance, that member is required to refer that client to the attorney, as the only attorney in the chapter. We note that in some cases, it would be unethical for the attorney to agree to represent a particular client who is referred. For example, DR 6-101(A) provides that "[a] lawyer shall not: 1. Handle a legal matter which the lawyer knows or should know that he or she is not competent to handle . . ." Obviously, there will be some referrals that the attorney is not qualified to handle and he or she cannot agree to undertake representation in these matters. Nor could the attorney agree in advance to accept a matter without knowing whether it will involve the attorney in a matter beyond his or her competence. Likewise, if the attorney did not have adequate time to devote to a matter, representation would not be warranted. Finally, some representations may involve a possible conflict of interest, either with other current or former clients, or with the attorney's own interests, and such a representation would be ethically impermissible.

More importantly, participation in the organization would run afoul of DR 2-103(B), which provides:

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, except that a lawyer may pay the usual and reasonable fees or dues charged by a qualified legal assistance organization. . .

Qualified legal assistance organizations are defined in DR 1-103(D) and the organization is not one that is exempt from the prohibition of DR 2-103(B).

Because the attorney is required to pay substantial dues to the organization in exchange for membership that entitles the attorney to referrals from other members and is required to make referrals to these members, the attorney would be transferring something “of value” in order to obtain referrals, which is prohibited by DR 2-103(B). See N.Y. State 566 (1984) (lawyer may not pay a real estate brokerage firm to endorse or recommend the lawyer); Nassau County Op. 97-8 (1997) (precluding a lawyer from entering into a “mutual referral relationship” with a health care organization because it constitutes “a thing of value” received for referrals); N.Y. State 524 (1980) (lawyer may not donate legal services to charitable organization for fundraising auction because the lawyer would be directing his or her fee to the organization in return for obtaining employment by a client); see also N.Y. State 691 (1997) (lawyer permitted to make charitable donation to nonprofit organization that provides clients with a referral list of attorneys only so long as the donation is clearly intended to be charitable and not part of a tacit arrangement of compensation in exchange for referrals); N.Y. State 659 (1994) (lawyer may permit car dealer to distribute materials that includes lawyer’s advertising so long as lawyer does not pay car dealer a fee).

Finally, the organization’s materials tout the benefits of “word of mouth” advertising. They state that belonging to the organization is “like having dozens of sales people working for you because all the other members carry several copies of your business cards around with them. When they meet someone new who could use your products or services they hand your card out and recommend your services.” DR 2-103(A) prohibits a lawyer from engaging in in-person solicitation, other than from a close friend, relative, client or former client. DR 1-102(A)(2) prohibits a lawyer from circumventing a Disciplinary Rule through actions of another. It is ethically permissible for a lawyer to ask another person to hand out his or her business card, without stating more. See N.Y. State 659 (1994). If, however, the other members of the organization (to whom the attorney must make referrals) are encouraged to recommend the lawyer’s services orally, this oral conversation might violate the Code. See, e.g., *In re Alessi*, 60 N.Y.2d 229 (1983); *In re Greene*, 54 N.Y.2d 118 (1981) (referral arrangement between lawyer and real estate broker).

## CONCLUSION

A lawyer may not participate in a business networking organization that requires the lawyer to refer clients to other members in exchange for their referral of legal business.

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