

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-313
Issued: August 1986

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), especially Rules 7.01-7.50 and the Attorneys' Advertising Commission Regulations, before relying on this opinion.

Question: May a Kentucky attorney legitimately enter into a referral attorney agreement with a for-profit lawyer referral service (that operates on a nationwide basis) if no payment is required of participating attorneys but the for-profit service “selects” referred counsel?

Answer: No.

References: ABA Informal Opinion 85-1510 (1985); Maryland Opinion 81-75 (1981)

OPINION

While the Committee recently addressed the operation of not-for-profit lawyer referral services in KBA E-296 (1984), the status of for-profit lawyer referral services remains unclear, in part because this state adheres to the 1969 Code. Indeed, the marketing of national for-profit services has provoked controversy in a number of jurisdictions. Maryland Opinion 81-79 (1981), Law. Man. Prof. Con. § 801:4312 (lawyer may not participate in a for-profit lawyer referral service).

The ABA recently addressed this question in ABA Informal Opinion 85-1510 (1985), which held that the Code prohibits attorney participation in for-profit referral services in which the for-profit organization “selects” referred counsel (Model Code DR 2-103 (D)(4)) unless the service is bar association “operated, sponsored, or approved” (Model Code DR 2-103 (D)(1)(d)). Cf. 1969 Code 2-103(D).

The Committee is not aware of the existence of any procedures for “approval” of such services in this state, and at least one service making inquiry has taken the position that the Bar Association has no authority over it. Accordingly, the Committee must conclude that such a service would violate the Code as applied literally.

Although the Model Rules have been recommended for adoption by a Special Committee of the Bar Association, they have not yet been adopted. Therefore, attorneys in this state should exercise caution before entering into any such national referral services arrangement.

The Committee would point out that the above described service is not a “Group Legal Services Arrangement” as such arrangements are defined and regulated in SCR 3.476.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.