

Lawyer participation in online legal referral services

OPINION #1-18

Question

Can a lawyer participate in an online legal referral service where the lawyer must pay a “marketing fee” for each service completed?

Short Answer

These arrangements risk violation of several Indiana ethics rules.

Recommended Rules for Review

[Indiana Rules of Professional Conduct](#): 1.2(c), 5.4(a), 5.4(c), 7.2(b), 7.3(d), 7.3(e).

Summary

Technology and increasing competition in the legal profession and business in general have driven the expansion of a variety of online legal services. Significant growth has been apparent among online service providers offering consumers fixed-fee, limited scope services provided by local attorneys. Typical business models set a fixed fee for various legal services with a local attorney performing the actual legal work. The company, not the attorney, defines the types of legal services offered, the scope of the representation, the fees charged, and other parameters of the legal representation.

Common features of these arrangements include: 1) prearranged fees established by the online company; 2) a “marketing fee” received by the online company; 3) addition of a local attorney to a database accessible to and used by the prospective client to select the attorney; and 4) a caution from the online company that an attorney may decline representation, but that repeated refusals could result in the removal of the attorney’s name from the database.

The Ethical Problems

Business models such as these present the following potential ethical issues for Indiana lawyers:

Improper Fee Splitting

Indiana Rules of Professional Conduct Rule 5.4(a) generally prohibits a lawyer from splitting fees with a non-lawyer. By allowing the online company to charge the lawyer a “marketing fee” every time the lawyer earns a fee, a lawyer risks violating this rule.

Abdication of Professional Independence

Indiana Rules of Professional Conduct Rule 5.4(c) requires a lawyer to maintain his/her professional independence. These “referral” models risk violation of this rule by:

- Locking in the client’s legal needs without actual consultation. For instance, a client may select preparation of a simple will which may not be appropriate for the client’s estate planning needs. A lawyer cannot gauge the true legal needs of a client without meaningful prior consultation.
- The online company sets the fee based on an assumed time frame in which to complete the legal task. By allowing the online company to direct the length of time the lawyer should spend on representation, the attorney may be engaging in a process of agreeing to provide legal services which cannot realistically be performed within the allotted time.
- Many of the online referral businesses guarantee the client a full reimbursement of a fee if the client is not satisfied with the representation provided. This refund may occur regardless of the lawyer’s work product or the lawyer’s opinion of the quality of legal services rendered, creating additional concern that the lawyer has abdicated his/her professional independence to the non-lawyer referral service.

Limited Representation

Indiana Rules of Professional Conduct Rule 1.2(c) provides that if the services to be performed are limited in scope, as is generally contemplated by many of the online legal referral businesses, the limitation must be reasonable and the client must be informed and give consent to the limitation and objectives of the representation. The “referral” business model raises concerns about meeting this obligation.

Marketing Fee is Not Reasonable Cost of Advertising

A lawyer may not accept referrals from a for-profit referral service or pay a fee for a referral. A lawyer might suggest that the marketing fee charged by the online company should be viewed as an advertising cost. While the rules allow for “the reasonable costs of advertising,” these marketing fees charged by online companies fail to qualify as such because:

The fee is typically tied to the cost of the legal services provided and is not tied to the actual cost of advertising the individual lawyer's legal services.

Unlike advertising fees which are typically a one time or recurring charge for the actual advertising and communications permitted by the rules, the typical fee to an online company for "marketing" is only paid after the attorney renders a service to a client. Accordingly, these transactions are more akin to fee splitting or a referral fee, not payment for advertising.

For more information on the parameters of lawyer advertising, please refer to **Indiana Rules of Professional Conduct Rule 7.2 and 7.3.**

Possible Misleading Communication Concerning a Lawyer's Services

Certain online companies may also violate Indiana's advertising rule requirements by falsely inflating the abilities of the attorneys to whom they make referrals. For instance, many online companies advertise "highly qualified" or "knowledgeable" or even specialized attorneys but allow counsel to accept cases without having any prior experience. This type of advertising may be misleading under **Indiana Rules of Professional Conduct Rule 7.1.**

Conclusion

Though online referral services may differ in the details of the services offered, these business models raise several ethical concerns for the Indiana practitioner. A lawyer should carefully review the relevant rules and understand that participation in online legal referral services may put him/her at risk of violating multiple ethical rules and that the lawyer may be subject to discipline.

This nonbinding advisory opinion is issued by the Indiana Supreme Court Disciplinary Commission in response to a prospective or hypothetical question regarding the application of the ethics rules applicable to Indiana judges and lawyers. The Indiana Supreme Court Disciplinary Commission is solely responsible for the content of this advisory opinion, and the advice contained in this opinion is not attributable to the Indiana Supreme Court.