

## **ETHICS OPINION**

**RO-99-01**

### **OFFICE OF GENERAL COUNSEL**

#### **QUESTION:**

The Disciplinary Commission has determined that it would be appropriate to give further consideration to the conclusions reached in RO's 92-23 and 93-23 which address the issue of whether an attorney may pay the advertising expenses of another attorney in exchange for referrals from the attorney whose services are advertised.

#### **ANSWER:**

An arrangement whereby advertising expenses are paid by someone or some entity other than the lawyer whose services are being advertised would, in the opinion of the Disciplinary Commission, violate Rule 7.1 of the Rules of Professional Conduct, in that advertising under such circumstances would constitute "a false or misleading communication about the lawyer or the lawyer's services." Additionally, payment of advertising expenses in exchange for referrals violates the prohibition in Rule 7.2(c) against a lawyer giving "anything of value to a person for recommending the lawyer's services."

#### **DISCUSSION:**

Rule 7.1 of the Rules of Professional Conduct provides as follows:

**"Rule 7.1 Communications Concerning  
A Lawyer's Services**

**A lawyer shall not make or cause to be made a false  
or misleading communication about the lawyer or**

**the lawyer's services. A communication is false or misleading if it:**

- (a) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;**
- (b) Is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;**
- (c) Compares the quality of the lawyer's services with the quality of other lawyer's services, except as provided in Rule 7.4; or**
- (d) Communicates the certification of the lawyer by a certifying organization, except as provided in Rule 7.7."**

**It would appear obvious that any potential client who calls the telephone number listed in the above described advertisement scheme would be misled as to which attorney they would be dealing with and who would be representing them in their particular legal matter. While the referral concept is obviously an acceptable one in this state, advertisement by means of this type of conduit whereby one attorney or firm avoids direct participation in the advertising, other than funding the same, misleads the public as to what attorney or attorneys a potential client will be dealing with and which attorney will ultimately serve as the client's legal representative.**

**Further, the lawyers involved in open referrals must ensure the client is aware of the referral system, division of fees, degree of participation of the attorneys involved, etc., as mandated by Rule 1.5 of the Alabama Rules of Professional Conduct.**

**The purpose of the rules is to protect the public. Any advertising scheme which would circumvent full disclosure of relevant information to the consuming public violates, not only the rules themselves, but their spirit and purpose as well. Strict adherence to applicable rules would not allow such an advertising and referral arrangement. The circuitous referral concept envisioned therein is not a plan structured as to prevent misleading the public while maintaining the integrity of the representation of the client.**

**Other rules of professional conduct would be impacted, or potentially impacted, by this type of advertising and referral arrangement. First, the fact that one attorney would be paying the advertising expenses of a second attorney in exchange for referrals means that the second attorney would be receiving something of value in return for a referral or recommendation of the first attorney's services. This is clearly violative of Rule 7.2(c), which provides, in pertinent part, that "[a] lawyer shall not give anything of value to a person for recommending the lawyer's services ...."**

**Furthermore, Rule 1.10 deals with vicarious disqualification of lawyers associated in a "firm." Whether a group of lawyers constitutes a "firm" for**

**purposes of this rule is a factual question. The Comment to Rule 1.10 notes that a group of lawyers could be considered a “firm” in one context of the rule, but not in another. If lawyers are associated in the practice of law in some way, the exact relationship can be immaterial for the purposes of disqualification under Rule 1.10. In light of the provisions of Rule 1.10, and the construction which has been placed thereon, there would appear to be a distinct possibility that attorneys or firms who participate in such an advertising arrangement would inherit one another’s conflicts of interest and would thereby be vicariously disqualified from any matter in which the other had a conflict.**

**Based upon the above, it is the opinion of the Disciplinary Commission of the Alabama State Bar that it is ethically impermissible for one attorney to pay the expense of advertising the services of a second attorney in exchange for the referral of cases by the second attorney. To the extent that RO-92-23 or RO-93-23 may be inconsistent with the conclusions stated herein, they are to be considered as modified in conformity herewith.**

**LGK/vf**

**3/16/99**