

ETHICS OPINION

RO-91-43

QUESTION:

"The purpose of this letter is to request a disciplinary opinion on the following advertising situation.

I have been approached by the 'Attorney Hotline', which appears to be a referral association located in California. They have prepared ads for television, which they run in a given market, such as Birmingham. The ads are used on a nationwide basis. For Alabama, the ads would contain the disclaimer and an attorney's or firm's name either in wording across the bottom of the screen or at the end. A person is given an 800 number to call if they are interested in having an attorney call them regarding their particular problem. The calls are received in California and transmitted to the participating attorney, who then calls the client. The Attorney Hotline arranges with the local television station for these specific spots.

The cost for the program, which includes forty (40) spots on a local television station is \$2,495. I have contacted the same local station and requested information regarding how much these spots would cost if they were arranged directly by the attorney. I was informed that the cost would be virtually identical to that being charged by the Attorney Hotline. The sales person at the channel said the Hotline would be paid the fifteen (15) percent commission that an advertising agency would be paid. He further stated that it would be against FCC regulations for the station to sell the air time for less to the agency than it does to an individual contacting them directly."

ANSWER:

"Attorney Hotline" is from all appearance nothing more than a for-profit referral service and, as such, Alabama lawyers cannot ethically participate in its program.

DISCUSSION:

Rule 7.2(c) states "A lawyer shall not give anything of value to a person for recommending the lawyer's services." However, lawyers can participate in not-for-profit lawyer referral programs, such as the one sponsored by the State Bar.

"Attorney Hotline" selects the lawyers that participate in its program. The 800 number is directed to their offices and they make the referral. We do not know if they screen calls in any fashion. Apparently, they produce and own the commercials. The participating lawyer makes payment directly to

"Attorney's Hotline". This payment is not just to cover scheduled TV air time because "Attorney's Hotline" is providing other services besides the placing of advertising. The lawyer is really paying for the referrals generated and not just advertising. (Apparently, the referrals are given exclusively to a lawyer or firm in a particular geographical area. ~~_____~~
~~_____~~.)

The fact that "Attorney's Hotline" may receive all of its revenue from the commissions paid by television stations to advertising agencies does not really alter the concept of the program. This is contrasted from a true advertising cooperative of Alabama lawyers who would pool financial resources for more advertising impact and who control the advertising process themselves, or where a lawyer simply pays an advertising agency to produce and air commercials.

On the facts presented, "Attorney's Hotline" is not a referral service that comes within our interpretation of what is permitted by Rule 7.2(c) of the Rules of Professional Conduct.

MLM/vf

11/18/91