

ETHICS OPINION

RO-92-23

QUESTION:

* * *

"Our firm is desirous of funding the television advertising, and perhaps radio advertising, for a solo practitioner here in the [REDACTED] area. We expect to have a telephone line installed at the solo practitioner's office to be used exclusively for responses to the advertising. When calls come in, information pertaining to the caller's potential case is taken down and, assuming the claim has merit, the caller is informed up front that he or she will be contacted by another attorney who specializes in the problem related by the caller. Someone in our firm will contact the caller and discuss the potential case over the phone and, if appropriate, either inform the caller that the firm is declining to represent him or her or schedule an appointment with the caller at which time an employment contract would be executed between our firm and the caller assuming our firm decides to take the case.

It is anticipated and expected that the solo practitioner will retain many of these cases himself. The solo practitioner has been in private practice in the state for approximately ten years, and has extensive litigation experience in state and federal court.

All cases which our firm decides to handle will be done on a contingency fee basis, and the solo practitioner will receive a referral fee."

* * *

ANSWER:

Your firm may not fund the television advertising for a solo practitioner who will in turn refer cases to your firm, as such a concept causes to be made a false or misleading communication about the lawyers' services available to the public.

DISCUSSION:

Rule 7.1, Alabama Rules of Professional Conduct, states 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 lawyers' 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."

The main concern with your proposed referral scheme is that anyone who calls the listed number in the advertisement is misled as to who they are dealing with and who will be representing them in their particular legal matter. While the referral concept is obviously an acceptable one in this State, the advertising of such a conduit whereby your firm avoids direct participation in the advertising other than funding same misleads the public as to what attorney or attorneys they will be dealing with and possibly having as their legal representative.

Further, the lawyers involved in open referrals must insure that the client is aware of the referral system, division of fees, degree of participation of attorneys involved, etc., as mandated by Rule 1.5, 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 when advertising legal services violates not only the rules themselves, but their spirit and purpose as well.

Strict adherence to the applicable rules would not allow a plan such as that proposed by you. The circuitous referral concept envisioned therein is not a plan structured so as to prevent any misleading of the public while maintaining the integrity of the representation of the client.

JAM/vf

12/18/92