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ISSUE: In what circumstances may a lawyer join a networking group that is not registered with the State Bar of California as a licensed attorney referral service?

DIGEST: A lawyer may not be a member of a networking group that (1) limits the number of lawyer members; (2) prohibits membership in other networking groups; and (3) places pressure on non-lawyer members to make a minimum number of referrals to other members of the group. In addition, a lawyer’s payment of a membership fee to such a networking group, or providing referrals to other members, may violate Rules of Professional Conduct, rule 7.2(b).

A lawyer may join a networking group that does not promise referrals as a benefit of membership; does not limit the number of lawyer members; and does not pressure members to provide referrals to one another—provided the lawyer follows other Rules of Professional Conduct, including rules 5.4(e) and 7.2(b).

AUTHORITIES ADDRESSED Business and Professions Code §§ 6150, 6151, 6155; Evidence Code § 175; Rules of Professional Conduct, rules 1.0.1(g-1), 5.4, 7.2, 7.3, 8.4; and Rules 3.800 and 3.820 of the Rules of the State Bar of California, Division 5, Chapter 3.

BACKGROUND FACTS

To increase Lawyer’s client base, Lawyer wishes to join a local chapter of a professional networking group (“Organization”). The Organization’s application includes an explanation of the participation fees, including annual dues, which are applied toward the Organization’s administrative costs.

The Organization’s policies state the group’s purpose is “passing referrals to one another.” Only one person from any profession may join a chapter. Members are not permitted to be a member of any other networking group, including other Organization chapters. To maintain membership, for the first year, members are expected either to bring a minimum of five visitors to each Organization meeting or make a minimum of five bona fide referrals each month. Thereafter, members are expected either to bring a minimum of 10 visitors to each Organization meeting or make a minimum of 10 bona fide referrals each month. Additionally, the Organization’s policies contain a Code of Ethics that provides that if a member’s profession has a more stringent standard in their formal code of conduct, members must adhere to that higher standard.

Lawyer is assured by the Organization that, if the Rules of Professional Conduct prohibit the obligation of passing referrals to other members, the Organization’s Code of Ethics will exempt Lawyer from that obligation. The Organization is not licensed as an attorney referral service.

DISCUSSION

Joining a networking group for the purpose of obtaining or meeting potential clients is often an attractive option for many lawyers in private practice. Lawyers have many options—local Chamber of Commerce; legal trade association; others—all promoted as vehicles for lawyers to build relationships that help secure and generate clients. When joining a networking group, however, a lawyer must carefully consider ethical obligations and their impact on the lawyer’s conduct as a member of a “networking group”.

Business and Professions Code section 6155¹ and the California Rules of Professional Conduct prohibit membership in the Organization as described in this Opinion.

Rule 5.4(e): Lawyers May Not Accept Referrals From An Organization Operating As An Unregistered Lawyer Referral Service

Accepting referrals from an unlicensed referral service violates rule 5.4(e) of the Rules of Professional Conduct, which prohibits lawyers from accepting referrals from, or otherwise participating in, an unqualified lawyer referral service, as well as section 6155(a) (“no attorney shall accept a referral of... potential clients” from an unlicensed referral service). Such conduct also violates rule 8.4(a), which expressly prohibits lawyers from violating the State Bar Act.

A lawyer referral service is an individual or entity that operates “for the direct or indirect purpose, in whole or in part, of referring potential clients to attorneys.” (Bus. & Prof. Code § 6150(a).) The Court of Appeal defined “a referral as the act of directing a potential client to an attorney.” (*Jackson v. Legalmatch.com* (2019) 42 Cal.App.5th 760, 773[rev. denied, *Jackson v. Legalmatch.com*, 2020 Cal. LEXIS 1699 (Mar. 11, 2020)].) The court further stated that “referral activity” covers “any entity ‘which, in person, electronically, or otherwise, refers the consumer to a lawyer or law firm not identified’ in permissible advertising.” (*Id.* at p. 771.) The court held that LegalMatch.com’s operations fell within the scope of section 6155 because LegalMatch.com placed limitations on the number of lawyers who could purchase subscriptions² for a particular geographic area and type of law, and directed clients to a subset of lawyers who were permitted to join Legalmatch.com’s panel. (*Id.* at p. 777.)

Here, the Organization is providing referrals as defined in *Jackson v. LegalMatch.com* because its very purpose is for members to pass referrals to each other, and membership limits the number of participants from each profession to one. While many referrals within the Organization will not be to lawyers, the Organization still qualifies as a lawyer referral service because it operates “with the direct or indirect purpose, *in whole or in part*, of referring potential clients to attorneys.” (Section 6155, subd. (a) [emphasis added].) Consequently, as in *Jackson*, the Organization’s operations, as defined in the Organization’s own statement of purpose, fall within the scope of section 6155. Therefore, the Organization’s owner must register it with the

¹ Further references to “section 6155” refer to Business and Professions Code section 6155.

² *LegalMatch.com*’s business model relied on “yearly or multi-year subscriptions that lawyers may purchase to receive *LegalMatch.com*’s intake information.” (*Id.* at p. 765.)

State Bar and operate it in conformity with the minimum standards the State Bar established or the Supreme Court approved.³ (*Id.* at pp. 770-771.)

Section 6155, subdivision (a)(1), provides, in pertinent part, that an individual or entity “shall not operate for the direct or indirect purpose, in whole or in part, of referring potential clients to lawyers, and no lawyer shall accept a referral of such potential clients” unless certain requirements are met, including, but not limited to, “[t]he service is registered with the State Bar of California and . . . is operated in conformity with minimum standards for a lawyer referral service established by the State Bar, or . . . is operated in conformity with” minimum standards approved by the Supreme Court.⁴ Rule 3.800 of the State Bar Act, in turn, requires such individuals or organizations to be certified as a lawyer referral service.

Here, the facts state that the Organization is not a licensed referral service; nor could it be. (See Rules and Regulations of the State Bar of California Pertaining to Lawyer Referral Services, rule 12.4 [requiring a minimum of four lawyer members for a subject matter panel], rule 12.6 [requiring a minimum of twenty lawyer members to whom referrals can be made], and rule 13.1 [prohibiting all referrals being made to a single lawyer or law firm]). Therefore, Lawyer’s participation is prohibited.

Rule 7.2(b): Lawyers May Not Provide Compensation for Referrals

Rule of Professional Conduct 7.2(b) provides that a “lawyer shall not compensate, promise or give anything of value to a person for the purpose of recommending or securing the services of the lawyer or the lawyer’s law firm,” with five exceptions—none applicable. In our example, Lawyer’s membership in the Organization requires Lawyer to pay membership dues to the Organization (a “person”). Lawyer is also expected to bring referrals and/or visitors to meetings. Both qualify as “something of value.” The question is whether they are given “for the purpose of recommending or securing the services of the lawyer or the lawyer’s law firm,” and if so, whether an exception applies. We analyze each below.

Issue 1: Payment of Membership Dues

Payment of membership dues to an organization, such as a voluntary local bar organization or other nonprofit group, would not normally qualify as providing something of value “for the purpose of” obtaining referrals, even if referrals are in fact informally exchanged among organization members. However, the structure and purpose of the Organization puts it in a different category. Lawyer pays membership fees to the Organization in exchange for being the sole lawyer member of a chapter in the Organization, the sole or main purpose of which is for members to pass referrals to one another. In addition, other members are required to either bring visitors to meetings or bring referrals to other chapter members, of which Lawyer is one.

³ On September 11, 2020, the California State Bar Office of Professional Competence granted *LegalMatch.com*’s application for Certification as a Lawyer Referral Service.

⁴ The minimum standards are set out in Rule 3.820 of the Rules of the State Bar of California, Division 5, Chapter 3.

Although the membership fee is paid to a person⁵ other than the individuals making the referrals, nothing in rule 7.2 requires that the thing of value be given directly to the person who recommends the Lawyer's services. Instead, rule 7.2 broadly prohibits a lawyer from giving something of value to a person "for the purpose of recommending or securing the services of the lawyer or the lawyer's law firm." Paying the Organization to gain access to other members who will be incentivized to refer business to Lawyer qualifies as giving of something of value to a person "for the purpose of" recommending or securing the lawyer's services. (See *Jackson v. LegalMatch.com*, *supra*, 42 Cal.App.5th at p. 773 [defining a referral as the act of directing a potential client to a lawyer].)

A number of state bar organizations have reached similar conclusions. For instance, in 2006 the New York State Bar Association Committee on Professional Ethics (the "N.Y. Committee") considered a scenario in which members paid membership fees to a networking group, including a registration fee, an annual fee, and occasional monthly fees to pay for working space and breakfast. The networking group required members generally to bring referrals or visitors to meetings, and permitted local chapters to set a minimum number of referrals or visitors. However, lawyers were exempt from these referral requirements, because the rules of the networking group provided that professional standards outlined in a formal code of ethics supersede the organization's policies. (NYSBA Ethics Opn. 791 (2006).)

The N.Y. Committee concluded this violates the lawyer's ethical obligations, despite the exemption for lawyers. Although the lawyer was not required to provide referrals, the lawyer was still paying a membership fee in exchange for the "privilege of membership," and the other members of the networking group remained obligated to provide referrals to other members of the group. As the only lawyer member of the group, the lawyer would be the recipient of any legal referrals. In effect, the N.Y. Committee concluded, the lawyer was paying for referrals in violation of New York's rule prohibiting such payments. The N.Y. Committee thus drew a bright line rule to guide New York lawyers: "A lawyer may not pay dues to an organization that requires its members to refer potential clients to the lawyer." Membership in the Organization would therefore violate rule 7.2(b), unless an exception applies. Here, none do.

The exceptions to rule 7.2(b) provide that "a lawyer may":

- (1) pay the reasonable*⁶ costs of advertisements or communications permitted by this rule;
- (2) pay the usual charges of a legal services plan or a qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for a Lawyer Referral Service in California;
- (3) pay for a law practice in accordance with rule 1.17;

⁵ A "person" includes a natural person, firm, association, organization, partnership, business trust, corporation, limited liability company, or public entity. (Rules of Prof. Cond., rule 1.0.1(g-1); Evid. Code § 175.) A "person" thus includes entities like the Organization.

⁶ Asterisks that appear in the Rules of Professional Conduct denote terms defined in rule 1.0.1.

(4) refer clients to another lawyer or a nonlawyer professional pursuant to an arrangement not otherwise prohibited under these Rules or the State Bar Act that provides for the other person* to refer clients or customers to the lawyer, if:

(i) the reciprocal referral arrangement is not exclusive; and

(ii) the client is informed of the existence and nature of the arrangement;

(5) offer or give a gift or gratuity to a person* having made a recommendation resulting in the employment of the lawyer or the lawyer's law firm,* provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.

None of these exceptions apply. The payment of the membership fee in this case is not a payment for an advertisement under subsection (1); a payment for a law practice under subsection (3); or a gift or gratuity provided for under subsection (5). Nor does the payment of the membership fee qualify as a referral to another lawyer or nonlawyer provided for under subsection (4).

The closest exception that could apply is subsection (2), which permits a lawyer to “pay the usual charges of a legal services plan or a qualified lawyer referral service.” The Organization does not qualify as a legal services plan or a qualified lawyer referral service.⁷ Thus, because no exception applies, Lawyer's membership in the Organization violates rule 7.2.

Issue 2: Providing Referrals for Referrals

Even if the Organization did not require lawyer members to pay a membership fee, the Organization's referral arrangement remains an issue. Under the facts, while Lawyer has not promised to provide any referrals, Lawyer may, but is not required to, provide referrals to other members of the Organization. In the absence of such a promise, which would separately qualify as a thing of value, the issue only becomes relevant if Lawyer in fact provides a referral to another member.

Rule 7.2(b) only prohibits a lawyer from giving something of value to a person “for the purpose of recommending or securing the services of the lawyer or the lawyer's law firm.” We must analyze whether referrals Lawyer made are “for the purpose of” recommending or securing employment in light of the Organization's defining purpose—the exchange of referrals—plus its structure which includes the fact that Lawyer is the only lawyer who can receive referrals within a group that is incentivized to provide referrals. Under these facts, any referrals Lawyer made would be presumptively “for the purpose of” obtaining referrals. Thus, providing referrals to other members of the Organization would presumptively violate rule 7.2(b), unless one of the exceptions applies.

A referral provided by a lawyer is not a payment of money that would be permitted by rule 7.2(b), subsections (1), (2), (3), or (5). As to subsection (4), it provides that a lawyer may

⁷ This would not be an issue if the Organization were a qualified or licensed lawyer referral service. However, under the facts, it is not, nor could it be, a licensed lawyer referral service.

refer clients to another lawyer or a nonlawyer professional pursuant to an arrangement not otherwise prohibited under these Rules or the State Bar Act that provides for the other person* to refer clients or customers to the lawyer, if:

- (i) the reciprocal referral arrangement is not exclusive; and
- (ii) the client is informed of the existence and nature of the arrangement;

For this exception to apply, the arrangement may not be prohibited under the Rules or the State Bar Act. This opinion already concludes that the arrangement qualifies as an unlicensed lawyer referral service, and rule 5.4(e) prohibits lawyers from participating in an unqualified lawyer referral service. As such, this exception does not apply.⁸

Networking Groups That (1) Are Not Licensed Attorney Referral Services, But (2) Are Ethically Permissible

There are networking groups that are permissible for lawyer participation, but lawyers must be mindful of both rules 5.4 and 7.2 in determining whether the group is potentially problematic. The easiest case would be an organization that places no limitation on the number of lawyer members, does not promise referrals as a benefit of membership, does not advertise referral exchanges as a benefit of membership, and places no pressure on its members to provide referrals. Membership in such an organization would pose no problem, so long as other Rules of Professional Conduct are followed.

Many organizations, however, may advertise as a benefit of membership the benefits of networking and the attendant potential for members to develop sources of referrals. In the committee's opinion, advertising as described is simply a truthful statement setting out one of the reasons lawyers network in the first place. There is no ethical prohibition on networking with the purpose of developing relationships that may lead to referrals in the future. Advertising these benefits of networking is also permissible, and an organization does not become an unlicensed attorney referral service by making those representations. This analysis changes, however, if there are other statements that go beyond what is described above. For example, if an organization represents that referral exchanges (as opposed to networking) are a benefit of membership, that organization will be treading into problematic territory, and lawyers are likewise treading in problematic territory by participating.

But a simple statement that networking can lead to referrals does not transform an otherwise lawful organization into an unlicensed attorney referral service, nor does it transform membership fees into unlawful payments "for the purpose of" securing employment. More is needed, and the facts of each case must be analyzed under rules 5.4(e) and 7.2(b), as well as applicable sections of the Business and Professions Code. For that reason, this opinion is limited to the facts presented—a networking group that creates a quota system that puts pressure on

⁸ Application of this exception is likewise problematic in light of the requirement that any "reciprocal referral arrangement" cannot be "exclusive." The Organization's structure creates a "reciprocal referral arrangement" between Lawyer and each of the other members that, for each non-lawyer member, appears exclusive.

members to refer business within the group, that prohibits membership in other networking groups, and that restricts the number of lawyer members.

The Arrangement Must Not Otherwise Violate the Rules of Ethics or the State Bar Act

If membership in a networking group is permissible under rules 5.4 and 7.2, Lawyer must still ensure Lawyer's membership or participation in the Organization does not violate any other Rules of Professional Conduct, including, without limitation, the general ban on in-person solicitation. (See rule 7.3.)

Lawyers may "participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person . . . contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan." (See rule 7.3(d).) Lawyers may also participate in constitutionally protected activities of bona fide public or charitable legal-service organizations, as well as bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries. (See, e.g., *In re Primus* (1978) 436 U.S. 412 [98 S.Ct. 1893].) Finally, Lawyer must ensure that other members actively soliciting potential clients as part of the Organization's membership agreement do not in any manner or capacity act an agent for a lawyer.

Conclusion

A lawyer may not ethically be a member of a networking group as described in the facts because it qualifies as an unlicensed attorney referral service, participation in which violates rule 5.4(e).

A lawyer may be a member of a networking group that does not promise referrals as a membership benefit, does not limit the number of lawyer members, and does not pressure members to provide referrals to one another, so long as the lawyer also acts consistent with rules 5.4(c) and 7.2(b).

This opinion is issued by the San Diego County Bar Association. It is advisory only, and is not binding upon the courts, the State Bar of California, any persons or tribunals charged with regulatory responsibilities, or any member of the State Bar.