

ISSUE: May lawyers receiving referrals from a registered lawyer referral service place telephone calls to prospective clients referred by the program?

DIGEST: Lawyers may directly contact prospective clients they have no previous relationship with when the clients initiate the communication by contacting a registered lawyer referral service which then provides the clients' contact information to the lawyers. In such instances, the client, not the lawyer initiates the communication, therefore, avoiding any of the concerns of improper intrusion, coercion, or duress that the advertising rules are designed to prevent.

AUTHORITY INTERPRETED:

Current Rule of Professional Conduct 1-400(B)(1)

New Rule of Professional Conduct 7.3

STATEMENT OF FACTS

Prospective Client has a claim that Prospective Client would like to bring. But Prospective Client does not know any lawyers and is generally distrustful of online reviews. Prospective Client asks some colleagues for suggestions and one colleague mentions that the local county bar association has a lawyer referral service.

Prospective Client calls the county bar association's lawyer referral service, which is registered with the State Bar following a submission that included the referral procedures it follows, and complies with all of the requirements for a referral service. During the call, Prospective Client provides contact information and information regarding the nature of the claim that Prospective Client intends to bring. Following the telephone call, the referral service provides that information to a panel of three attorneys who have been vetted to have relevant experience in the appropriate practice area. Shortly after receiving information the referral service, Lawyer, one of the members of the panel, directly calls Prospective Client to discuss potential engagement. Lawyer had never before even met Prospective Client, let alone had a preexisting familial or professional relationship directly with Lawyer.

DISCUSSION

Current Rule of Professional Conduct 1-400(B)(1) provides that lawyers may not "deliver" a telephone communication concerning their availability for professional employment where the lawyers have no family or prior professional relationship, unless the solicitation is protected under either the United States Constitution or California's Constitution. New Rule 7.3 similarly proscribes a solicitation unless the person contacted is a lawyer or has a family, close personal, or prior professional relationship with the lawyer. This concept is something that has been embraced in other ethics opinions. (See, e.g., Cal. State Bar Form. Opn. 1988-105 [impermissible for lawyer to make initial contact with potential client by telephone; but okay to initiate communications with potential client via targeted mail].) The reasons for such a rule are that such contact cannot be reasonably regulated and, knowing this, lawyers could potentially use the opportunity to exert influence through duress, coercion, interruption, or other improper means on vulnerable individuals.

Here, Prospective Client did not know Lawyer before Lawyer called. But that does not make the telephone call improper. The Supreme Court of California has recognized that lawyers should have the opportunity to meet and speak with persons they believe want to potentially employ them. In *Hildebrand v. State Bar* (1941) 18 Cal.2d 816, the Court examined a situation where a lawyer met with prospective clients at a hospital. There, the lawyer had been informed that people at the hospital wanted to see him professionally. So, it was permissible for him to communicate with them. Although, like telephone solicitation, in-person solicitation is proscribed by rule 1-400 and new rule 7.3, the Court concluded that there is no solicitation on a lawyer's part or any unethical conduct in going to see persons when a lawyer does so in good faith and upon the justifiable assumption that the lawyer is meeting persons who want to employ him or her. "If such were solicitation an attorney would never be permitted to speak to a prospective client concerning a prospective professional employment except in those instances only in which the client personally asks for an attorney to represent him in some matter." (*Id.* at p. 822.)

The State Bar of California certifies Lawyer Referral Services to help Californians find attorneys.¹ A necessary step in the referral process is determining which lawyers who have passed a referral service's screening for a particular engagement also have both availability and an interest in taking on the matter. Although the referral service could, for example, make such a determination and then provide contact information to Prospective Client to make contacts with members of the panel, giving information to Lawyer to contact Prospective Client, when Prospective Client first reached out, does not create an ethical dilemma.

As Comment [1] to new rule 7.3 provides, "[a] lawyer's communication does not constitute a solicitation . . . if it is in response to a request for information." Prospective Client effectively initiated the conversation with Lawyer. In such an instance, the concerns that Prospective Client may be subjected to intrusion, duress, or coercion is not present. Prospective Client has requested to be connected to a lawyer and has provided contact information to allow such contact to be made.

This scenario is not fundamentally different than a client calling a law firm, asking whether any of the attorneys engages in a particular area, and then having the call forwarded to that lawyer, especially if the caller is placed through to voice mail and asks the lawyer to call back.

When a potential client reaches out to either a law firm or a referral service, it is reasonable for a lawyer to conclude that the lawyer is communicating with a person who potentially wants to employ him or her.

CONCLUSION

Once a prospective client contacts a State Bar qualified lawyer referral service with a request for legal services, a lawyer may reasonably conclude that the potential client manifested an intent to communicate with members of the service's panel regarding their availability for engagement to provide professional services. Whether the client or the lawyer initiates the next contact does not have a bearing on whether the communication is permissible. In such instances, if the lawyer has a good faith belief that the potential client is interested in discussing potential engagement, that lawyer may initiate the next contact with the client.

¹ Currently, Business and Professions Code section 6155 addresses the operation of and acceptance of referrals from a referral service.

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.