

ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

Appointed by the Supreme Court of New Jersey



OPINION 745

Referral Fees

The Advisory Committee on Professional Ethics and the attorney ethics research assistance hotline have received inquiries about out-of-state lawyers seeking payment of referral fees from New Jersey certified attorneys. Some states, such as Florida, host seasonal New Jersey residents who present local lawyers with legal issues that involve New Jersey law; out-of-state lawyers in our neighboring states may also have local clients with New Jersey matters. For the reasons set forth in this Opinion, certified lawyers generally may not pay referral fees to out-of-state lawyers. Certified lawyers also may not pay referral fees to New Jersey lawyers who cannot accept a case, or must withdraw from a case, due to a conflict of interest. Certified lawyers may, however, pay referral fees to New Jersey

lawyers who referred a case when they were eligible to practice but were thereafter suspended or disbarred when the case resolved and the referral fee was payable.

Only New Jersey lawyers who are certified trial lawyers under Court Rule 1:39-1 through 1:39-9 may pay a referral fee. The Rules of Professional Conduct prohibit other New Jersey lawyers from paying referral fees. RPC 7.2(c) (lawyers shall not “give anything of value to a person for recommending the lawyer’s services”) and RPC 7.3(d) (lawyers “shall not compensate or give anything of value” to a person for recommending the lawyer’s employment by a client or “as a reward for having made a recommendation resulting in the lawyer’s employment by a client”).

Referral fees are a division of the legal fee, paid for legal services rendered.

Rule of Professional Conduct 1.5(e) provides:

Except as otherwise provided by the Court Rules, a division of fee between lawyers who are not in the same firm may be made only if:

- (1) the division is in proportion to the services performed by each lawyer, or, by written agreement with the client, each lawyer assumes joint responsibility for the representation; and
- (2) the client is notified of the fee division; and
- (3) the client consents to the participation of all the lawyers involved; and
- (4) the total fee is reasonable.

Thus, lawyers may receive a legal fee only in proportion to legal services rendered or when the lawyer has assumed joint responsibility for the representation. RPC 1.5(e). The Court Rule governing certified lawyers, however, expressly permit them to pay a referral fee: “fee division may be made without regard to services performed or responsibility assumed by the referring attorney.” R. 1:39-6(d).

As a referral fee is considered payment for legal services rendered in the case (not in proportion to actual services rendered), the lawyer to whom the fee is payable must be eligible to practice New Jersey law. People who are not permitted to practice law in New Jersey may not receive fees for legal services rendered.

Stack v. P.G. Garage, Inc., 7 N.J. 118, 120, 123 (1951) (nonlawyer suit to obtain fee for legal services dismissed because unauthorized practice of law is illegal);

Appell v. Reiner, 81 N.J. Super. 229, 241 (Ch. Div. 1963), rev’d on other grounds 43 N.J. 313 (1964) (out-of-state lawyer not entitled to recover legal fee for

unauthorized practice of law); In re Armorer, 153 N.J. 358 (1998) (New Jersey lawyer cannot recover fee for services rendered while ineligible to practice law).

An out-of-state lawyer is not permitted to receive a referral fee for a New Jersey case unless the out-of-state lawyer is licensed and eligible to practice law in New Jersey. Among other requirements, lawyers must have New Jersey bank accounts to be eligible to practice law in New Jersey. Rule 1:21-6(a).

New Jersey lawyers who cannot undertake a New Jersey case, or who must withdraw from a case, due to a conflict of interest often refer the matter to a certified lawyer. Certified lawyers may not pay referral fees in these circumstances since the referring lawyers are not able to, or are no longer able to, provide legal services in that case. Of course, if an unforeseen conflict arises in the midst of litigation and was not foreseeable, the lawyer is entitled to payment for legal services rendered prior to withdrawing from the matter, though no further payment may be made. DeBolt v. Parker, 234 N.J. Super. 471 (Law Div. 1988) (lawyer who had to withdraw from a case when an unforeseen conflict developed was entitled to be paid only for services rendered prior to the development of the conflict and withdrawal); ACPE Opinion 613 (May 1988) (lawyer could be paid for services rendered prior to withdrawal due to an unforeseen conflict but could not receive a referral fee because the lawyer should not “profit from” the conflict); Opinion 629 (July 1989) and Opinion 304 (May 1975) (lawyers were permitted fees for legal services rendered prior to withdrawal due to an unforeseen conflict). Hence, if a lawyer is unable to represent a party due to a conflict, the lawyer cannot receive a legal fees, in the form of a referral fee, for that representation.

Certified lawyers may pay referral fees to lawyers who were in good standing and eligible to practice law at the time of the referral but who later were suspended or disbarred at the time the case was concluded and the referral fee was

payable. Eichen, Levinson & Crutchlow, LLP v. Weiner, 397 N.J. Super. 588, 594-95 (App. Div.), certif. den. 195 N.J. 418 (2008). The court reasoned that the referring lawyer was not required to have performed any legal work on the referred cases to obtain the referral fee and, at the time of the referral, the lawyer was eligible to practice.

At times, New Jersey lawyers refer cases to out-of-state lawyers. New Jersey lawyers may not “practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.” RPC 5.5(a)(1). If the law of the other state allows payment for legal services in the form of a referral fee to an out-of-state lawyer, then the New Jersey lawyer may accept the referral fee. The New Jersey lawyer should, however, ensure that the other state’s law permits such payment for legal services or risk violating Rule of Professional Conduct 5.5(a)(1). Further, all referrals should depend upon the specific needs of the client. “[T]he lawyer owes a duty to make an independent judgment concerning what kind of referral will be in the client's best interests, completely free from any economic or other incentive that might weigh on the lawyer's judgment.” Opinion 681 (July 1995); see also Opinion 696 (May 2005).

In sum, certified lawyers may not pay referral fees to out-of-state lawyers unless those out-of-state lawyers are licensed and eligible to practice law in New Jersey. In addition, certified lawyers may not pay referral fees to a lawyer who

cannot handle a matter due to a conflict of interest, though they may pay referral fees to lawyers who referred a case when they were eligible to practice but were suspended or disbarred at the time the case resolved and the referral fee was payable.