



COMMITTEE ON ATTORNEY ADVERTISING

ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

Appointed by the Supreme Court of New Jersey

JOINT OPINION

**Committee on Attorney Advertising Opinion 47
Advisory Committee on Professional Ethics Opinion 741**

**Lawyers Shall Not Pay For Client Referrals;
Purported “Leads” Offered by Marketing
Companies May Be Disguised Referrals**

The Committee on Attorney Advertising has been made aware that an out-of-state marketing company is sending emails to New Jersey lawyers offering to connect the lawyers with clients for specific mass tort cases. The emails list prices for claimants “starting at” \$700 for persons adversely affected by the drug Zantac; \$500 for persons injured by faulty earplugs made by 3M; \$1,000 for persons suffering side effects after hernia mesh surgery, and \$1,800 for persons whose eyesight was damaged by the drug Elmiron. The emails also state that the company can provide names of claimants who suffered sex abuse by clergy. The company states that it has an 86% “retention rate.” As the activity concerns potential violations of the ethics

rules governing referrals and fee-sharing, the Committee on Attorney Advertising and the Advisory Committee on Professional Ethics issue this Joint Opinion to remind lawyers that they are prohibited from paying for client referrals, and purported “leads” offered by marketing companies may be disguised referrals.

This activity raises concerns about violation of Rule of Professional Conduct 7.3(d), which provides:

A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure 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 except that the lawyer may pay for public communications permitted by RPC 7.1 and the usual and reasonable fees or dues charged by a lawyer referral service operated, sponsored, or approved by a bar association.

Accordingly, lawyers may not pay a non-lawyer or marketing company to refer clients to them.

ACPE Joint Opinion 732 / CAA Joint Opinion 44 / UPL Committee Joint Opinion 54 (June 2017) (paying a “marketing fee” to a company that refers clients to lawyers violates RPC 5.4(a) and RPC 7.3(d)). See also ACPE Joint Opinion 716 / UPL Committee Joint Opinion 45 (June 2009) (lawyers may not pay referral fees to loan modification companies to refer clients to them). Further, payment of a referral fee is considered impermissible fee-sharing, in violation of Rule of Professional Conduct 5.4(a).

The Committee on Attorney Advertising, in Opinion 43 (2011), found that lawyers may pay “per lead” but may not pay “per client retained.” The Committee stated: “The fee scheme imposed by the Internet company here is “pay-per-lead,” a payment for each contact form the website sends to a participating attorney. The payment is based only on the contact, not on the retention of the attorney by the client or the establishment of an attorney-client relationship.”

While New Jersey lawyers may pay “per lead,” they have an obligation to question whether the marketing company is improperly labelling its services and the “lead” is really a

disguised referral. Lawyers must consider factors that differentiate between a payment “per lead” and a payment “per client,” beyond the mere labels used.

The out-of-state company whose emails were reviewed by the Committees touts that its “leads” have an 86% “retention rate.” The company’s emphasis on a high “retention rate” demonstrates that its services are priced according to the potential for the establishment of an attorney-client relationship and they are not selling mere “leads.”

Another factor to consider is the price requested per “lead.” A high price per claimant supports the notion that the company is selling a client, not a “lead” on a client. The company charges lawyers \$1,800 per Elmiron lawsuit claimant. Most “leads” do not approach this monetary value. Prices per lead that are significantly higher than the ordinary marketplace value of a lead suggest that the sale is of a client, not a lead.

Other factors become apparent based on an examination of the terms of the sale offered by the marketing company. There may be signals in the contract that support a finding that the sale is of clients, not leads.

Lawyers must be extremely cautious when considering whether to enter into such contracts, as there is a high risk of violating the Rules of Professional Conduct. Purported “leads” offered by marketing companies may be disguised referrals. Lawyers are prohibited from paying for client referrals, Rule of Professional Conduct 7.3(d), and paying a referral fee is considered impermissible fee-sharing. RPC 5.4(a).