

ETHICS OPINION

RO-93-15

[REDACTED]

QUESTION:

"Pursuant to our recent conversations, I have enclosed the ad that the AFL-CIO is asking us to purchase in their professional service directory. My understanding is that this ad costs \$425.00, and is a one-time fee. If we buy this ad, it is my understanding that the AFL-CIO will endorse and recommend our firm to its members in C [REDACTED] County. Additionally, they will secure a number of business cards from us, stamp them on the back with the Union insignia, and hand them out at Union meetings. My concern, obviously, is that I do not want to even come close to an ethical problem related to paying for referrals.

Please look over this ad and let me know whether there would be a problem with our firm participating in this."

COMPLIMENTS FROM

THE LAW FIRM OF

[REDACTED]

1 [REDACTED] AVE.

[REDACTED], ALA. [REDACTED]

205-[REDACTED]

UNION ENDORSED ATTORNEYS

FOR C [REDACTED] CO.

REQUIRED DISCLAIMER.

ANSWER:

You may purchase an ad in the AFL-CIO (Union) service directory and accept the endorsement and recommendation of the Union. Additionally, you may provide the Union with business cards to be handed out by the Union at their meetings so long as you do not pay the Union for this service or their endorsement.

DISCUSSION:

Rule 8.4(a) of the Rules of Professional Conduct provides that it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct through the acts of another. Thus, it would be improper for a lawyer to use a third party to solicit professional employment on his or her behalf. Similarly, using an organization that is a mere front for solicitation by a lawyer or lawyers is also prohibited.

Consequently, the Disciplinary Commission has approved certain employer prepaid legal service plans including those marketed by American Express and Montgomery Ward, while disapproving the use of "for profit" lawyer referral plans. [RO-90-49(A) & (B), "Personal Injury Trial Lawyers Association, Inc.", "Bankruptcy Attorneys Trust and DWI/DUI Defense League"]. In RO-91-17, the Disciplinary Commission prohibited a lawyer's participation in "Welcome Wagon" where the lawyer agreed to pay "Welcome Wagon" two dollars for each solicitation made on behalf of the lawyer.

The issue presented here is somewhat different in that the Union is not a "mere front" for the lawyer nor is the lawyer paying the Union for referrals or contacts. In Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar, 377 U.S. 1 (1964), the State Bar attempted to enjoin a Union from referring Union members' tort claims to a group of lawyers selected by the Union on the basis of honesty and competence in handling railroad personal injury cases. The court upheld the Union's right to advise its members concerning the need for legal services as part of a constitutional right of workers to assist and advise each other. Similarly, in United Transportation Union v. Michigan State Bar, 401 U.S. 576 (1971), the Michigan State Bar attempted to enjoin a Union representative from visiting injured Union members and encouraging them to retain Union approved lawyers that had agreed to charge a contingent fee no greater than 25%. The

Union's stated purpose of this activity was to get competent and affordable counsel for its members. The court held that this collective activity for obtaining meaningful access to the courts was a fundamental right under the First Amendment. The constant factor in these cases was the presence of organized labor seeking legal services to meet specific legal needs arising out of activity which formed the basis of group membership.

The situation presented by this inquiry is similar to the situations in the above cases. The Union is attempting to approve and recommend various professional service providers to its membership. For that reason, it is the view of the Disciplinary Commission that you may participate in this plan as an attorney endorsed by the Union. The Commission notes that the \$425.00 ad cost is not excessive, is charged only once and, therefore, cannot be viewed as a payment for solicitation.

RWN/vF

7/27/93