

ETHICS OPINION

RO-93-23

[REDACTED]

QUESTION:

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"Our firm desires to fund the costs of establishing a separate firm, paying rent, utilities, incidental expenses and salaries for one or more attorneys and their secretaries. The lawyers comprising the separate firm would not be partners or associates of our firm. In the event the separate firm desired to advertise then we would underwrite all costs and expenses relating to television and radio advertising of the services of the separate firm.

It is anticipated the lawyers comprising the separate firm will refer to our firm certain cases generated by their firm which our firm desired to handle. Our firm will handle those cases it desires and may decline those it does not wish to handle.

All cases which our firm decides to handle will be under a contingency fee arrangement, with the separate firm receiving any referral fee earned.

May we fund the establishment of the separate firm and pay for its advertising, under agreement that certain cases generated by that firm may be referred to our firm for an acceptance or rejection as above described?"

ANSWER:

Your law firm may not establish a separate and distinct law firm and pay for advertising and other operating expenses in return for the referral of certain cases.

DISCUSSION:

This same question was previously considered by the Disciplinary Commission in RO-92-23 which is attached hereto. In that opinion, the Disciplinary Commission felt that this type of arrangement would violate Rule 7.1 of the Rules of Professional Conduct because the public could be misled about who would actually be representing them. You have not specified who is going to control the content of any advertising, and who will decide which cases are to be referred to your firm. It sounds as though you intend to screen all of the separate firm's cases.

Other Rules of Professional Conduct are potentially impacted by your proposal. Since your firm is going to pay salaries and operating expenses of these unassociated lawyers, you are giving something of value in return for a referral or recommendation of your services. This is violative of Rule 7.2(c).

While you have made a point of identifying this new firm established by you as "separate", it is apparent that your only purpose in proceeding as stated is to create an advertising front and referral conduit for your existing firm. Rule 1.10 deals with vicarious disqualification of lawyers associated in a "firm". Whether a group of lawyers constitutes a firm for purposes of this rule is a factual question. The Comment to Rule 1.10 notes that a group of lawyers could be considered a "firm" in one context of the rule, but not in another. If lawyers are associated in the practice of law in some way, the exact relationship can be immaterial for purposes of Rule 1.10. In that regard, it is the Commission's opinion that this "separate" firm would inherit all the conflicts relevant to your firm's former and existing clients. Your firm would, of course, be reciprocally affected by Rule 1.10.

12/30/93

MLM/vf