

## **Ethics Opinion No. 78-5**

### **Whether it is Ethical for an Employee of Alaska Legal Services to Refer Ineligible Clients and Fee-Generating Cases to Individual Lawyers Within the Community Rather than to the Statewide Lawyer Referral Office in Anchorage.**

The problem presented is whether it is ethical for an employee of Alaska Legal Services to refer ineligible clients and fee-generating cases to individual lawyers within the community rather than to the statewide lawyer referral office in Anchorage.

DR 2-103 is the applicable rule regarding recommendations of professional employment. In particular, DR 2-103(A) states that a lawyer is not prohibited from being "recommended, employed or paid by, or cooperating with, one of the following offices or organizations that promote the use of his services . . . if there is no interference with the exercise of independent professional judgment in behalf of his client." The section then proceeds to list the organizations from which a lawyer is not prohibited from being recommended, including one operated or sponsored by a governmental agency (such as the federally funded Alaska Legal Services Corporation). Although the rule is stated in terms that a lawyer is not prohibited from *accepting* a recommendation from an organization like ALSC, it would seem to follow therefrom that an employee of ALSC is *not prohibited from recommending* the lawyer.

Although it was primarily concerned with the fee arrangements of legal aid societies, ABA Informal Opinion No. 1334 lends support to this conclusion. In that opinion, one of the questions presented was whether a legal aid society could accept a client and then refer the matter to private counsel who, in turn, is compensated by the legal aid society. It was ruled that "no Disciplinary Rule forbids a lawyer with a legal aid society from making such a reference or forbids a lawyer from receiving such a reference on any fee basis that is mutually satisfactory and that is not clearly excessive or illegal." Obviously, there are differences between the situation addressed in the opinion and the present problem. In the opinion, the legal aid society had already accepted the client, whereas in the present situation, the referrals are being made to persons determined to be ineligible to receive benefits from ALSC. Also, in the opinion, the fees of the lawyer referred to by the legal aid society were paid by the society, rather than the client himself. However, such differences do not prevent the conclusion that an employee of such a legal aid society is not prohibited from referring a client to another lawyer, since the same rationale used by the Ethics Committee in Informal Opinion No. 1334 is equally applicable under the present circumstances, i.e., *no Disciplinary Rule forbids* a lawyer with a legal aid society from making such a reference.

An obvious concern with such a conclusion is the solicitation of such referrals by private lawyers. However, Disciplinary Rules 2-103(B) and 2-103(C) would address the activities of such lawyers. DR 2-103(B) states that except by paying dues to certain approved organizations, a lawyer shall not give anything of value to anyone to recommend his employment or as a reward for having made a recommendation resulting in his employment by a client. Additionally, DR 2-103(C) states that a lawyer may not request anyone to recommend him, except, he may request referrals from a referral service approved by a bar association. Any violation of these two rules would subject the offending lawyer to disciplinary proceedings, which would appear to be more appropriate than prohibiting employees of a legal aid society from making such recommendations on a good faith basis.

In conclusion, no Disciplinary Rule is necessarily violated by the referral by employees of the Alaska Legal Services Corporation of ineligible clients to private lawyers rather than to the statewide lawyers referral program.

Adopted by the Board of Governors on March 31, 1979.