
**E-84-17 Payment for referrals from insurance
company subsidiary**

Question

An insurance company is creating a subsidiary which will act as a resource center and referral agency for the company's independence agencies. The subsidiary wishes to have available a law firm to accept referrals concerning certain legal problems. The subsidiary proposes to charge a fee for such referrals equalling 2 percent of the fees generated by the law firm handling the referred case. Rather than being a referral commission or finder's fee, the fee charged is intended to cover costs involved in operating the subsidiary. Would it be proper to pay a fee for such referrals?

Opinion

The Wisconsin Code for Professional Responsibility, codified in Chapter 20 of the Wisconsin Supreme Court Rules, states that a lawyer may not share legal fees with a nonlawyer. SCR 20.19. It appears that the proposed referral fee is in fact a division of fees and therefore improper. See *ABA/BNA Lawyer's Manual on Professional Conduct*, at 41:801-02; *In re Lebowitz*, 7 A.D.2d 240, 414 N.Y.S.2d 735 (1979); see generally Annot., 6 A.L.R.3d 1446 (1966) (fee sharing with nonlawyer). But see SCR 11.06 (group or prepaid legal services plans).

The Code further states that a lawyer may not request a person or organization to recommend employment, as a private practitioner, of himself or herself, except that a lawyer may request referrals from a lawyer referral service operated, sponsored or approved by the bar. SCR 20.09(3). In addition, the Code states that laypersons are best served if the recommendation of a lawyer is disinterested and informed. SCR 20.06(3)(c); see Formal Opinion E-79-4, Wis. Bar Bull., June 1984, at 62; see also Memorandum Opinion 3/67C, Wis. Bar Bull., June 1984, at 96. In order that recommendations be disinterested, a lawyer should not seek to influence another to recommend his or her employment. SCR 20.06(3)(c); see also Wis. Stat. sec. 757.295(3) (1981-82). By paying any fee for referrals, even if the fee is not intended to be a "referral commission," a

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lawyer is seeking to influence another to recommend his or her employment and the conduct is impermissible.