

ORANGE COUNTY BAR ASSOCIATION SOLO/SMALL FIRM SECTION

THE ETHICS OF REFERRALS

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- I. BUSINESS AND PROFESSIONS CODE SECTION 6155 PROHIBITS OPERATING FOR THE DIRECT OR INDIRECT PURPOSE, OF REFERRING POTENTIAL CLIENTS TO LAWYERS AND PROHIBITS LAWYERS FROM ACCEPTING SUCH REFERRALS:

§6155. Lawyer Referral Service-Ownership, Operation; Formulation and Enforcement of Rules and Regulations; Fees

- a. An individual, partnership, corporation, association, or any other entity shall not operate for the direct or indirect purpose, in whole or in part, of referring potential clients to attorneys, and no attorney shall accept a referral of such potential clients, unless all of the following requirements are met:
1. The service is registered with the State Bar of California and (a) on July 1, 1988, is operated in conformity with minimum standards for a lawyer referral service established by the State Bar, or (b) upon approval by the Supreme Court of minimum standards for a lawyer referral service, is operated in conformity with those standards.
 2. The combined charges to the potential client by the referral service and the attorney to whom the potential client is referred do not exceed the total cost that the client would normally pay if no referral service were involved.

- II. THE RUNNERS AND CAPPERS ACT (BUS. & PROF. §§6150 et seq.) CREATES CRIMINAL LIABILITY FOR IN PERSON SOLICITATION OF POTENTIAL CLIENTS FOR LAWYERS

§6152. Prohibition of Solicitation

- a. It is unlawful for:

1. **Any person**, in an individual capacity or in a capacity as a public or private employee, or for any firm, corporation, partnership or association **to act as a runner or capper for any attorneys or to solicit any business for any attorneys** in and about the state prisons, county jails, city jails, city prisons, or other places of detention of persons, city receiving hospitals, city and county receiving hospitals, county hospitals, superior courts, or **in any public institution or in any public place or upon any public street or highway** or in and about private hospitals, sanitariums or in and about any private institution **or upon private property of any character whatsoever.**

2. Any person to solicit another person to commit or join in the commission of a violation of subdivision (a).

Section 6151, subd. a defines runners and cappers as:

A runner or capper is any person, firm, association or corporation acting for consideration in any manner or in any capacity as an agent for an attorney at law or law firm, whether the attorney or any member of the law firm is admitted in California or any other jurisdiction, in the solicitation or procurement of business for the attorney at law or law firm as provided in this article.

Subdivision b defines an agent as:

An agent is one who represents another in dealings with one or more third persons.

Section 6154 provides that any contract for professional services secured by any attorney at law or law firm in this state through the services of a runner or capper **is void**.

Rule 1-400(C), California Rules of Professional Conduct ("CRPC") prohibits in person or telephonic solicitation indirectly through an agent:

A solicitation shall not be made by or on behalf of a member or law firm to a prospective client with whom the member or law firm has no family or prior professional relationship, unless the solicitation is protected from abridgment by the Constitution of the United States or by the Constitution of the State of California. A solicitation to a former or present client in the discharge of a member's or law firm's professional duties is not prohibited.

CRPC 1-400(B) defines solicitation as:

For purposes of this rule, a "**solicitation**" means **any communication**:

- (1) **Concerning the availability for professional employment of a member or a law firm in which a significant motive is pecuniary gain;** and
- (2) Which is:
 - (a) **delivered in person or by telephone, or**
 - (b) directed by any means to a person known to the sender to be represented by counsel in a matter which is a subject of the communication.

CRPC 1-320(B) prohibits lawyers from compensating non-lawyers referrals by others for compensation:

A member shall not compensate, give, or promise anything of value to any person or entity for the purpose of recommending or securing employment of the member or the member's law firm by a client, or as a reward for having made a recommendation resulting in employment of the member or the member's law firm by a client. A member's offering of or giving a gift or gratuity to any person or entity having made a recommendation resulting in the employment of the member or the member's law firm shall not of itself violate this rule, provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.

CRPC 1-320(C) prohibits compensation to the media for publicity that is not paid advertisement:

A member shall not compensate, give, or promise anything of value to any representative of the press, radio, television, or other communication medium in anticipation of or in return for publicity of the member, the law firm, or any other member as such in a news item, but the incidental provision of food or beverage shall not of itself violate this rule.

LAWYER TO LAWYER SOLICITATION:

CALBAR FRML OP. 1981-61: The solicitation CRPC does not prohibit a recommendation of employment by one attorney to another attorney. An attorney may ethically recommend his or her employment to another attorney, even when the latter is employed as legal counsel to a business and the purpose of the solicitation is to secure that business as a client.

REFERRAL TO BROKER:

CALBAR FRML OP. 2002-158: A lawyer may refer a potential client to a broker for a real property loan to pay for attorney's fees and costs so long as the lawyer does not provide legal representation or receive compensation with regard to the referral or the resulting loan or escrow transactions, and has no undisclosed business or personal relationship with the broker.

LETTERS TO REAL ESTATE BROKERS REQUESTING REFERRALS:

CALBAR FRML OP. 1983-75: A lawyer should not mail a letter prepared for mass distribution to all real estate brokers in an area, encouraging them to refer potential clients to the lawyer by offering a discount on legal fees for clients so referred.

LAWYER MARKETING OF SELF FOR LEGAL AND NON-LEGAL SERVICES:

CALBAR FRML OP. 1999-154: 1. When a member performs both legal and non-legal professional services for a client, the member is subject to the California Rules of Professional Conduct with respect to all of those services.

2. Rule 1-400 of the California Rules of Professional Conduct applies to a member's use of her credentials as a lawyer, such as the title "Esq." or reference to experience in tax and estate law on business cards, stationery, and other material promoting non-legal services where the services are

difficult to distinguish from legal services and a reasonable prospective client would infer from the use of the member's credentials that the member is offering legal services or services involving legal advice.

3. Under the facts presented, the compensation arrangement is not an impermissible sharing of fees with a non-lawyer. However, to the extent that the member's service is subject to the California Rules of Professional Conduct, the referral and compensation arrangement creates for the member a financial interest in the subject matter of the representation, requiring written disclosure to the client under rule 3-310(B)(4), and constitutes a business transaction with a client, requiring the member to comply with rule 3-300.

CALBAR FRML OP. 1995-140: A lawyer ethically may advise the client to purchase the insurance and also accept compensation from the insurance agent for the referral if the lawyer: (1) makes full disclosure in writing under rule 3-310(B)(4) of the California Rules of Professional Conduct¹ of all the relevant circumstances surrounding the referral arrangement and all actual and reasonably foreseeable consequences to the client from that arrangement; (2) complies with all of the requirements of rule 3-300 including obtaining the client's written consent to the arrangement; and (3) can competently advise the client under the circumstances.

SERVICE EXCHANGES BETWEEN LAWYERS AND OTHER PROFESSIONALS:

CALBAR FRML OP. 1981-60: It is improper for an attorney to participate in a service exchange in which a percentage of the legal fees earned are paid to the exchange.

CALBAR FRML OP. 1977-44: The Committee has been asked for an opinion on the propriety of a lawyer participating in a service exchange business which operates in the following fashion: A potential member is charged a fee for membership and pays a substantially larger amount annually for dues. Members are asked to perform services for other members of the organization. An attorney member would be asked by the exchange to perform legal services for another member charging his normal fee. The amount of the fee would be entered into the books of the exchange as a credit which the attorney member may use to obtain products or services from any other member of the exchange. However, when the amount of the "credit" in the exchange is to be utilized for purchases, ten percent of the amount of the purchase must be paid in cash to the exchange. The questioner asks if there are any ethical problems involved and further asks if it is appropriate to do legal work for the exchange itself, in addition to being a member of the organization.

It is the opinion of the Committee that participating in such an organization is a violation of CRPC rules prohibiting solicitation and fee-sharing.

ETHICS ALERT: Legal Services to Distressed Homeowners and Foreclosure Consultants on Loan Modifications ; SEE:
<http://calbar.ca.gov/calbar/pdfs/ethics/Ethics-Alert-Foreclosure.pdf>