

## Tracy, Mary

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Wednesday, April 24, 2019 4:02 PM  
**To:** Tracy, Mary  
**Subject:** FW: Comment on proposed change to RPC 7.2 and 7.3  
**Attachments:** Opinion 2106.pdf; Opinion 201401.pdf

**From:** Noah Davis [mailto:nd@inpacta.com]  
**Sent:** Wednesday, April 24, 2019 3:41 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comment on proposed change to RPC 7.2 and 7.3

### *E. Compensation for Recommending Lawyer Services ("Referral Fees")*

The suggested amendments would move the "referral fee" provisions from RPC 7.2(b) to subsection (b) of the solicitation rule, RPC 7.3, to reflect the historical justification for regulating referral fees as a prohibited form of solicitation (i.e., unseemly "running" or "ambulance chasing"). See Hazard, Hodes, & Jarvis, *supra*, at § 60.05<sup>th</sup> ("Ordinarily, paying for a recommendation of a lawyer's services is a form of solicitation, and thus is prohibited by Model Rule 7.3. [Model] Rule 7.2(b), however, provides several commonsense exceptions to govern situations in which money does indeed change hands in exchange for a recommendation of services, but where the evils of direct contact solicitation are not present."). The one material difference from the APRL proposal is that the suggested rule reflects the existence in Washington of LLLTs in subsection (b)(4).

Adopting this version of the referral fee rule would change or clarify the Washington rule on referral fees as follows:

- The rule is revised to expressly permit referral fee payments to lawyers and employees in the same firm to address, as noted in the APRL report, the reality that lawyers in the same firm routinely pay a portion of earned fees on a matter to the "originating" lawyer in the firm;
- Paragraph (b)(1) is changed to clarify that payments for online group directories or advertising platforms are permitted payments for advertising;
- Paragraph (b)(4) is changed to permit reciprocal referral arrangements with other professionals (in addition to lawyers and LLLTs), consistent with the current ABA Model Rule and the APRL proposal.
- Paragraph (b)(5) was added to include an additional exception for nominal gifts that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

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Dear Justices,

Thank you for considering changes to the RPCS and opening the door for comment. We all want to do what is best for the public and our profession and the RPCs are a key tool in ensuring public confidence and transparency, as well as the integrity of the profession.

And while I can't yet profess to be a "specialist" in ethics (though I may yet try for a certificate), I appreciate the Court's consideration of the following areas/changes:

1) In person solicitations. As it stands, neither lawyers or anyone on behalf of the lawyer are permitted to make in person or telephone solicitations. But by changing this rule, not only can the lawyer now do so, but the employees of the firm.

So, at the scene of an accident or injury, would it now be ok if I or a part-time (W-2) employee of the firm provided my card to the injured person, telling them "here's our card, we'd love to help you and make the [tortfeasor] pay. Please take some time to think about it. I'm happy to provide a discount too. please call me if anyone else contacts you."

I'm opposed to this change, even noting the duress limitations as I believe it would be subject to great misuse.

That said, I'm ok with a change to permit emails being treated like letters, especially if someone contacts you through a for profit referral (discount legal) service. A person who seeks a referral from a legal plan should be allowed to have the legal plan lawyer send them an email.

2) Firms hiring "marketing professionals". So, in addition to in person solicitations by lawyers, now we get into the situation where law firms hire, even on a part-time basis, individuals who then source/feed that firm clients from certain groups or communities. Can the marketing employee of the firm sit at the hospital? Or also work at a hospital? Or at a social work clinic? Or at marriage counseling clinic? Does there have to be no disclosure by the referring person that he/she works for the firm that she is recommending to the potential client?

Can I just pay to have someone just hang out at events that I believe will have potential clients where my card can be handed out to those present?

And I suppose we're going down the road of towards what some national firms have in terms of professional marketing departments and national advertising campaigns...

3) Prohibiting Lawyers themselves from serving as referral services to other lawyers (feeder lawyers) who are not in the same firm in return for payment. As it stands, there are some practitioners who join community groups/organizations and then act as "feeders" to other firms in exchange for a referral fee. Historically, that has been prohibited unless the "referring" lawyer is paid in proportion to the work done or there is joint responsibility for the representation (1.5(e))

It appears that there is no change to that. which is good. I know other states differ from WA on this.

If the proposed change simply makes clear that a lawyer practicing, e.g. bankruptcy, can refer his/her personal injury cases to a PI lawyer in return for bankruptcy cases coming back....i'm ok with that....since the reciprocity agreement must remain non-exclusive and the client must be informed of the nature and existence of the agreements between lawyers, and if any payment is made, it is in accord with 1.5(e).

The rule change does appear to broaden the referral arrangements to specifically permit networks with dentists, chiropractors, doctors, massage therapists and other professionals, so long as it's not exclusive and the arrangement is made known to the client. And that's fine.

4) Paid for referrals. Historically, WA appeared to prohibit specific, one-to-one paid for referrals. See attached advisory opinions 2106. But this was amended, it appears in part by the comments to the RPCs and by opinion #201401.

In this scenario, a company contacts the lawyer and informs the attorney that the company has a client that is in need of an attorney for a particular matter. In exchange for a payment, the referral/lead is made. The law firm/lawyer pays for the leads on an individual basis, or a monthly fee to obtain a certain number of leads/referrals.

That in turn created a for-profit system for generating leads. Instead, of general advertising, the for profit service matches specific clients with specific lawyers based, in large part, on how much the lawyer is willing to pay. Some of the national advertisements we see about class actions or medical devices appear to do this (or else are part of #2 above).

Sometimes this is just a bidding match. Sometimes it is paying for an “exclusive market”, like king county or south king county.

There were a number of lawsuits and challenges out there from big money to make lead generation services ethical..and it seems those services prevailed....in 7.2 and Comment 5.

With the proposed changes, Comment 5 to RPC 7.2 is being retained, in whole, it appears, when moved to RPC 7.3. While I’m not in favor of a bidding war for leads (and this system that was generated), I understand that perhaps that train has left the station...

That said, I would be in favor of “bolding” the new comment in 7.3 to ensure that the groups that provide the paid for referral/lead follow the limitations provided by this comment (which means the lawyer is responsible for ensuring that to be the case).

Again, thanks for your consideration as there appears to be a lot of debate and chatter among lawyers about these changes and the effects on the public and our practice...

Kindest Regards,

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# WASHINGTON STATE BAR ASSOCIATION

**Advisory Opinion: 2106**

**Year Issued: 2006**

**RPC(s): RPC 7.2(c), 7.4**

**Subject: a lawyer's participation in an online for-profit referral service**

## I. NATURE OF INQUIRY

The inquiring attorney asked whether there were ethical implications involved in participating in a legal marketing plan operated by an Internet company (the "Company"). The inquiring attorney explained that he would be one of no more than six attorneys practicing in his field who would potentially bid for work from potential clients who have contacted the Company. Subsequently, we were contacted by the General Counsel for the Company. This response is based on information from (i) the inquiring attorney, (ii) the Company's General Counsel, and (iii) the Company's website.

## II. DISCUSSION AND ANALYSIS

### A. The Company's Services

The Company's website says that it is an "attorney/client matching service and is not a referral service." From information available on their website, it appears that "matching" is accomplished as follows:

#### 1. Basic Services

The Company's basic services consist of three steps:

(a) A consumer seeking an attorney visits the website and fills out a questionnaire describing the legal services being sought. This questionnaire, says the website, presents questions "that are designed by attorneys to guide you through the process, just as a lawyer would during an initial consultation."

(b) The Company reviews the case description, determines what type of legal services are being sought and whether the case is "urgent." The Company then provides the case description to attorneys who practice in the proper field and are located in the correct geographical area -- without revealing the potential client's name or contact information.

(c) Interested attorneys may thereafter respond in writing describing relevant experiences and fee structures. From among those attorneys who respond, potential clients may review the attorneys' on-line profiles and contact attorneys with whom they are interested in working.

The Company's website also reveals the following:

- With respect to basic services, prospective clients pay no fees to the Company.
- Reportedly, attorneys do not pay any percentage of fees earned to the Company. Instead, the attorneys who become affiliated with the Company pay an application fee and a flat yearly fee. The Company guarantees attorneys that, at the end of a Membership Term, their revenues will exceed the paid membership fee. If not, for "Verified" attorneys (see below) membership will be extended without charge for up to half of the original membership term.
- The Company employs an "Allocation Model" that "balances" the number of Member Attorneys with the number of cases being posted by consumers. With respect to the Bar Inquiry at issue, the attorney reports that he was solicited to join the "trademark category" where the allocation is "limited to 6 attorneys who would bid on Federal trademark cases in the Western U.S." The Company's General Counsel represented that the company does not limit membership in a given area "except to the extent we may briefly put a potential member on the waitlist while we increase traffic in the area," and that attorneys "are never rejected due to low volume or to protect the bottom line of other members."

## 2. "Real-time Priority Service" and "Priority Service"

Although standard services are free to consumers, the Company advertises that "the fastest way to find the right lawyer" is to pay the Company a fee for either Priority Service or Real-time Priority Service.

### a. Real-time Priority Service

For a fee, after a consumer fills out the on-line questionnaire, a Company "Staff Lawyer" contacts the consumer by telephone within one business day, and the consumer can discuss the case for up to 30 minutes. The Staff Lawyer "will listen carefully, and identify the precise legal issues relevant to your case" (emphasis added). Then, the Staff Lawyer will draft a "written summary of your case to make it appeal strongly to lawyers." Thereafter, the summary will be circulated to affiliated lawyers via a "Priority broadcast," alerting lawyers that a "high-value case" has been presented. The Company's website cautions consumers that Staff Lawyers "are here to help you talk through the case and understand the legal issues behind it, but cannot offer legal advice."

### b. Priority Service

For a fee, after a consumer fills out the on-line questionnaire, a Company "Staff Lawyer" independently reviews the consumer's case description within one business day. The Company markets this service in part by asserting that the "correct legal category" of a consumer's case "isn't always obvious" and cautioning that if consumers, acting on their own, "mis-categorize" their case, "lawyers in the wrong legal discipline may view your case and you may not get any response" from such lawyers. Thus, the Company suggests that consumers pay the Priority Service fee to "guarantee" that the case summary contains a well-written and "legally accurate" description before it is circulated. The Company also reminds consumers that Company Staff Lawyers are "prohibited from offering you any legal advice."

## 3. Verified Status

Attorneys may become affiliated with the Company pursuant to a Standard Membership, or they may take "a few extra steps" to attain the Company's "Verified" attorney status. Verified Membership "costs nothing" and requires the attorney to submit three professional references and "improve and finalize" the attorney's on-line Profile. The benefits of Verified status are described as follows:

- Clients see a "Verified" logo attached to the lawyer's on-line Profile;
- Clients presenting cases will obtain a Satisfaction Guarantee only when they hire a Verified attorney; and
- Verified attorneys obtain an "Active Priority Listing." This means that the attorneys' responses to clients will be "presented above those Responses from Standard Members" and above Verified attorneys with less tenure. Consumers are told that Verified lawyers "have taken several extra steps to prove their superior professional background and firm commitment to serving [the Company's] clients." Consumers who end up "matching" with

Verified attorneys thereby obtain the Company's "Satisfaction Guarantee."

## B. Discussion of Rules Implicated.

### 1. The Company Apparently Constitutes an Impermissible For-Profit Referral Service in Violation of RPC 7.2(c).

RPC 7.2(c) provides as follows:

A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or written communication permitted by this rule and may pay the charges of a not-for-profit lawyer referral service or other legal service organization.

The website states that the Company is an "attorney/client matching service and is not a referral service." There are apparently no Washington State Bar opinions defining a referral service. In a 1999 opinion prohibiting lawyers from participating in Internet referral plans, the Arizona State Bar defined "referral service" as follows: The Committee has previously found the defining characteristic of a lawyer referral service to be '[t]he process of ascertaining the caller's legal needs and then matching them to a member having the appropriate area of expertise.'

Arizona Bar Op. 99-06.

Later, the Arizona Bar, in Opinion No. 05-08 (July 2005), reviewing the same or a similar service at issue in this response, concluded that it was a for-profit referral service, and therefore violated Arizona's ER 7.2. That opinion relied on Comment 6 to Arizona ER 7.2, which defines referral service as "any organization in which a person or entity receives requests for lawyer services, and allocates such requests to a particular lawyer or lawyers . . . ."

The Company says that it is not a referral service:

[The Company] does not allocate or transfer requests to a particular lawyer or lawyers or recommend any lawyer's services. Member attorneys review the posts and decide whether they wish to advertise their services to any of the posters.

Oct. 5, 2005, email from the Company.

Despite the Company's characterizations, it ascertains consumers' legal needs and forwards case descriptions to lawyers who practice in that particular specialty, a subset of who are "Verified" as capable of providing superior services. Furthermore, the pool of lawyers who may choose to "advertise" in response to the case descriptions forwarded to them may be quite small. The attorney making the Bar inquiry apparently was told he would be one of six trademark lawyers in the "Western U.S." to whom trademark cases were circulated. Thus, while consumers are not referred to a particular lawyer, their cases are sent for review by only a small group of lawyers.

Other state bars have examined this issue with regard to the same or similar Internet services. The South Carolina Bar opined that the service was not a referral service. Among other things, it noted that "the service provider plays no role in the decision-making process of the recipient of the information provided" (i.e., the potential client). It noted, however, that "a different answer would be reached if the Internet site provider was in anyway active in directing the user to a particular attorney." It concluded that "so long as the Internet site provider does not make specific recommendations to a particular attorney and there are no subjective judgments made by a third party in directing the user to one attorney over another . . . it would not be a referral service."

The Ohio Supreme Court, Op. 2001-02, indicated that one of the identifying characteristics of a referral service is if the company provides "services that go beyond the ministerial function of placing the attorney's or law firm's information into the public view."

Rhode Island concluded that the Company was not a referral service. Rhode Island concluded that the fee was a flat fee which purchased advertising and access to requests for legal services posted by consumers. The fee was not a percentage of, or otherwise linked to, the participating attorney's legal fees. Moreover, Rhode Island concluded that the Company does not recommend, refer or electronically direct consumers to a specific attorney. Attorney-client relationships are established off line and without the Company's participation.

Under the above authorities, it appears that the Company's system is a referral service. In particular, the "verified" attorneys are recommended above others, a logo appears next to their profile, and their responses are presented above those from "standard" attorneys. Thus, the Company makes "subjective judgments," and

provides more than "ministerial services."

## 2. The Company's "Verified" Attorney Designation May Violate RPC 7.4.

Rule 7.4 contains detailed standards regarding attorneys implying that they are "specialists."

### COMMUNICATION OF FIELDS OF PRACTICE

A lawyer shall not state or imply that the lawyer is a specialist except as follows:

(b) Upon issuance of an identifying certificate, award, or recognition by a group, organization, or association, a lawyer may use the terms 'certified,' 'specialist,' 'expert,' or any other similar term to describe his or her qualifications as a lawyer or his or her qualifications in any subspecialty of the law. If the terms are used to identify any certificate, award, or recognition by any group, organization, or association, the reference must meet the following requirements: (1) the reference must be truthful and verifiable and may not be misleading in violation of rule 7.1; (2) the reference must identify the certifying group, organization, or association; and (3) the reference must state that the Supreme Court of Washington does not recognize certification of specialties in the practice of law and that the certificate, award, or recognition is not a requirement to practice law in the state of Washington.

Consumers are told that Verified lawyers "have taken several extra steps to prove their superior professional background." The "Verified" logo is displayed on such an affiliated lawyer's profile. Thus, it appears that participating lawyers are holding themselves out as "verified" with a "superior professional background." This implicates the requirements of RPC 7.4. It is unclear whether the disclaimer required by RPC 7.4(b)(3) appears with the attorney's listing. If it does not, the participating attorney would be in violation of the rule. The representations, "verified" and "superior professional background" may be misleading under both RPC 7.1(a), (b) and (c) and 7.4(b).

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Advisory Opinions are provided for the education of the Bar and reflect the opinion of the Committee on Professional Ethics (CPE) or its predecessors. Advisory Opinions are provided pursuant to the authorization granted by the Board of Governors, but are not individually approved by the Board and do not reflect the official position of the Bar association. Laws other than the Washington State Rules of Professional Conduct may apply to the inquiry. The Committee's answer does not include or opine about any other applicable law other than the meaning of the Rules of Professional Conduct.

# WASHINGTON STATE BAR ASSOCIATION

**Advisory Opinion:** 201401

**Year Issued:** 2014

**RPC(s):** RPC 5.3(b), 5.3(c), 7.1, 7.2(b), 7.3(a), 7.3(b), 7.3(c), 7.4, 8.4(a)

**Subject:** Participation in online lead generation services

**Facts:**

Lawyer participates in an Internet-based lead generation service that charges participating lawyers a flat monthly membership fee. Lawyer provides information about her experience, practice areas, and the types of cases that she accepts. Potential clients provide the service with information about the type of lawyer that they seek.

Based upon the information provided to it, the service then sends the potential clients' contact information to those member lawyers. The service does not send the lawyers' contact information to the respective potential clients.

**Questions:**

1. May Lawyer participate in the lead generation service as described?
2. If so, may Lawyer initiate contact to one or more of the potential client leads?

**Conclusions:**

1. See discussion below.
2. Yes, qualified.

**Discussion:**

1. A lawyer may pay the reasonable cost of advertisements or permitted communications. RPC 7.2(b)(1). [n.1] But "[a] lawyer shall not give anything of value to a person for recommending the lawyer's services...." RPC 7.2(b) (emphasis added). When a communication endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities, such a communication is a recommendation of the kind contemplated by RPC 7.2(b). "Lawyers are not permitted to pay others for channeling professional work." RPC 7.2 cmt. 5.



A lawyer is permitted to publicly disseminate a variety of types of information, including but not limited to the following:

information concerning a lawyer's name or firm name, address and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

RPC 7.2 cmt. 2; see also ABA Formal Op. 10-457 (2010). Merely paying the reasonable cost of disseminating the information contemplated by RPC 7.2 cmt. 2 does not constitute a recommendation of a lawyer's services.

Therefore, Lawyer may pay others to disseminate such information, provided that the information is accurate. The payment can be calculated by a variety of methods, provided that the ultimate amount is reasonable. For example, the payment could be a flat fee, a monthly fee, or pay-per-click fee. [n.2]

"A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law." RPC 7.4(a). But a lawyer shall not state or imply that the lawyer is a specialist in a particular field of law, except as provided by RPC 7.4.[n.3] And a lawyer must be accurate when communicating about his or her services:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading. RPC 7.1.

A lawyer may compensate others to provide marketing or client-development services. RPC 7.2 cmt. 5. But a lawyer shall be responsible for the conduct of a nonlawyer in certain circumstances; and it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct through the acts of another. See RPC 5.3(c)(1);[n.4] RPC 8.4(a).[n.5]

When a lawyer utilizes the assistance of a nonlawyer and has direct supervisory authority over the nonlawyer, the lawyer shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the lawyer's professional obligations. See RPC 5.3(b).

Lawyer may pay others for generating client leads, such as Internet-based client leads, as long as (1) the lead generator does not recommend, endorse, or vouch for Lawyer or Lawyer's services, (2) any payment to or communication by the lead generation service is otherwise consistent with the Rules of Professional Conduct, and (3) the lead generation service does not make misleading statements or material misrepresentations. Therefore, the lead generation service's matching criteria must be based on disclosed, objective criteria. When a website attempts to match lawyers and clients based on a purported evaluation of the client's needs, or when a website vouches for the qualifications of the participating lawyer, then the website is a referral service, and the lawyer must not pay to participate.[n.6]

If the lead generation service makes subjective decisions in order to match the client to the lawyer, then the lawyer's payment constitutes an impermissible giving of value for recommending the lawyer's services or channeling work.[n.7] If, instead, the service matches clients and lawyers simply based on objective information—such as geographic information akin to a directory service—and discloses the specific basis upon which it matches lawyers and clients, then the payment does not violate the rule.

Before participating in the lead generation service, Lawyer should reasonably research and evaluate the nature

of the communications between the service and the prospective clients, as well as the basis of the lead generation's matching or references to the Lawyer. If the service will misrepresent the nature of its function, then Lawyer's participation could constitute professional misconduct.

Lawyers shall not participate in a lead generation service that is misleading, whether expressly or by implication. See RPC 7.1 (providing that a statement can be misleading if it "omits a fact necessary to make the statement considered as a whole not materially misleading"). If the service were to represent, expressly or impliedly, to the prospective clients that it has made a subjective match based on judgment—when the match is based solely upon objective information—then this would be misleading, and Lawyer must not participate.

Because of the likelihood that prospective clients will infer that the lead generation service is making subjective matching decisions, Lawyer must not participate in the lead generation service unless the service clearly discloses, in plain and conspicuous language, that the match was made solely based on specified objective information (e.g., geographic information, years of practice, or practice areas as described by the lawyer). Moreover, Lawyer must not participate in a lead generation service that states, implies, or creates a reasonable impression that it is making the referral without payment from the lawyer or has analyzed a person's legal problems when determining which lawyer should receive the referral.

Also, if Lawyer participates in a permitted form of a lead generation service, then Lawyer must also confirm and ensure that communications by the lead generation service complies with RPC 7.3(c), which requires that every communication made pursuant to the rule contain the name and office address of at least one lawyer responsible for its content.

2. Lawyers are generally prohibited from real-time solicitations for professional employment from prospective clients:

A lawyer shall not directly or through a third person, by in-person, live telephone, or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

- (1) is a lawyer;
- (2) has a family, close personal, or prior professional relationship with the lawyer; or
- (3) has consented to the contact by requesting a referral from a not-for-profit lawyer referral service.

RPC 7.3(a).[n.8]

Unless the prospective client has asked to be contacted by Lawyer, then Lawyer must not initiate a solicitation by telephoning the prospective client, initiating a real-time Internet communication with the prospective client (e.g., video chat or audio communication), or doing so in person. RPC 7.3 cmt. 9. Lawyer may, however, send an email, text message, or other written correspondence to the prospective client, soliciting professional employment, provided that the solicitation (1) does not involve coercion, duress, or harassment and (2) otherwise complies with the Rules of Professional Conduct. RPC 7.3(b)(2).

Lawyer may send a follow-up message that otherwise complies with the Rules of Professional Conduct. If the prospective client does not respond to Lawyer's initial message or follow-up message, then additional communications from Lawyer might violate RPC 7.3(b). See RPC 7.3 cmt. 5.[n.9] If the prospective client has expressed a desire to not be solicited by Lawyer, then Lawyer must not send such an email, text message, or

other written correspondence. RPC 7.3(b)(1).

Endnotes:

1. The rule provides as follows:

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may

(1) pay the reasonable cost of advertisements or communications permitted by this Rule;

RPC 7.2(b)(1).

2. "Pay per click (PPC) (also called cost per click) is an internet advertising model used to direct traffic to websites, in which advertisers pay the publisher (typically a website owner) when the ad is clicked."

Wikipedia.org, Pay per click, at [http://en.wikipedia.org/wiki/Pay\\_per\\_click](http://en.wikipedia.org/wiki/Pay_per_click) (last visited December 10, 2014; see also Supreme Court of New Jersey Committee on Attorney Advertising Op. 43 (2011) (concluding, inter alia, that "attorneys are not flatly prohibited from paying 'per-lead' Internet advertising charges provided [that] the marketing scheme is advertising and not an impermissible referral service.")).

3. The rule provides, inter alia, as follows:

(d) A lawyer shall not state or imply that a lawyer is a specialist in a particular field of law, except upon issuance of an identifying certificate, award, or recognition by a group, organization, or association, a lawyer may use the terms "certified", "specialist", "expert", or any other similar term to describe his or her qualifications as a lawyer or his or her qualifications in any subspecialty of the law. If the terms are used to identify any certificate, award, or recognition by any group, organization, or association, the reference must:

(1) be truthful and verifiable and otherwise comply with Rule 7.1;  
(2) identify the certifying group, organization, or association; and  
(3) state that the Supreme Court of Washington does not recognize certification of specialties in the practice of law and that the certificate, award, or recognition is not a requirement to practice law in the state of Washington.

RPC 7.4(d).

4. Rule 5.3 provides as follows:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the persons conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall

make reasonable efforts to ensure that the persons conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

- (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
- (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

RPC 5.3.

5. Rule 8.4(a) provides as follows:

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

RPC 8.4(a).

6. See Supreme Court of New Jersey Cmte. on Attorney Advertising Op. 43 (2011) (citing Arizona Opinion 06-06 (2006), Wash. Adv. Op. 2106 (2006), and Kentucky Bar Assoc. Ethics Op. E-429 (2008)). Other jurisdiction have concluded that websites are advertising and not referral services when there is sufficient information provided to users and there are no assertions about the qualifications of the participating lawyers. Id. (citing Supreme Court of Texas Professional Ethics Cmte. Op. 573 (2006) and Ohio Board of Commissioners on Grievances and Discipline Op. 2001-2 (2001)).

7. See WASH. ADV. OP. 2106 (2006) (concluding that participation in legal marketing plan operated by an Internet company would be a violation where the company identified participants as "'verified' attorneys," made "subjective judgments" that were more than "ministerial services," and charged participating lawyers an annual membership fee but would extend membership for up to half of the original membership term if a lawyer's resulting revenue did not exceed the paid membership fee); see also New York State Bar Assoc. Cmte. on Prof. Ethics Op. 799 (2006) (providing that "Lawyer may not participate in website that charges lawyer a fee to provide information about potential clients whom lawyer will then contact, where the website purports to analyze the prospective client's problem and selects which of its subscribing lawyers should respond, nor may the lawyer contact the prospective client by telephone unless the prospective client has expressly requested a telephone contact.").

8. This prohibition does not apply if the person contacted is a lawyer, has a family, close personal, or prior professional relationship with the lawyer, or has consented to the contact by requesting a referral from a not-for-profit lawyer referral service. RPC 7.3(a)(1)–(3).

9. The comment provides as follows:

But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the

meaning of Rule 7.3(b)(2), or which involves contact with a prospective client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication to a client as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the prospective client may violate the provisions of Rule 7.3(b).

RPC 7.3 cmt. 5.

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Advisory Opinions are provided for the education of the Bar and reflect the opinion of the Committee on Professional Ethics (CPE) or its predecessors. Advisory Opinions are provided pursuant to the authorization granted by the Board of Governors, but are not individually approved by the Board and do not reflect the official position of the Bar association. Laws other than the Washington State Rules of Professional Conduct may apply to the inquiry. The Committee's answer does not include or opine about any other applicable law other than the meaning of the Rules of Professional Conduct.