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Standing Committee on Professional Ethics

November 16, 2022

Informal Opinion 2022-02 **Referrals by a Retired Attorney**

A lawyer has requested an opinion on whether a retired lawyer who is no longer practicing and has a “judicial department status of retired or inactive,” may still be paid referral fees for new matters he refers to other lawyers.¹ We conclude that the answer is no. Regardless of whether the lawyer is retired, permanently retired, or on inactive status, payment of a referral fee for matters referred post-retirement would not be permissible.

There are two angles from which to look at the issue: (1) the retired lawyer’s conduct in receiving the fee; and (2) the active lawyer’s conduct in paying the fee for the referral. While the question is framed with respect to only the retired lawyer’s conduct, as a practical matter, both issues are relevant to analyzing the ethical issues in question. Because the second question provides helpful insight into analyzing the first, we address it first.

I. A Lawyer Generally May Not Pay a Referral Fee to a Non-Lawyer for Recommending the Lawyer’s Services

Subject to certain enumerated exceptions, Rule 7.2(c) of the Rules of Professional Conduct provides that “[a] lawyer shall not compensate, give or promise anything of value to a person for recommending the lawyer’s services. . . .” Subsection (4) provides an exception allowing a lawyer to “refer clients to another lawyer or nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if: (A) the reciprocal referral agreement is not exclusive; and (B) the client is informed of the existence and nature of the agreement....” The Commentary to the Rule explains that “a lawyer who receives referrals from a lawyer or nonlawyer professional [pursuant to this provision] must not pay anything solely for the referral” except as permitted by Rule 1.5(e).

Rule 1.5 addresses attorneys’ fees and Section (e) allows “[a] division of fee between lawyers who are not in the same firm ... only if: (1) The client is advised in writing of the compensation sharing agreement and of the participation of all the lawyers involved, and does not object; and (2) The total fee is reasonable.”

Thus, taken together, Rule 7.2(c) and Rule 1.5 permit a lawyer to pay an individual a referral fee for recommending the lawyer *only* where the individual providing the referral is also a lawyer (who has undertaken

¹ This Opinion only addresses the question of whether the retired lawyer may receive referral fees in connection with new referrals made after the lawyer has retired, not a scenario where the lawyer made the referral while in active practice, but would be paid subsequent to retirement.



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a limited representation of the client to provide the referral) and where the arrangement is explained to the client and the total fee is reasonable.

As we have previously explained,

[A]n attorney who uses his or her legal expertise to gather relevant information about a case, to evaluate both liability and damages, and, if appropriate, to attempt to match a case with an appropriate legal specialist is rendering legal services whether those services are advertised under the heading of ‘Attorney Referral Services’ or under ‘Attorneys,’ and whether those services are performed by a law firm or by lawyers employed by a business entity which calls itself something other than a law firm.

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Thus, here, a lawyer could not pay a fee to the retired attorney unless that attorney is still considered a lawyer capable of forming an attorney-client relationship and is one who could be paid for legal services rendered. As discussed below, we conclude a retired or inactive lawyer could not.

II. A Retired or Inactive Lawyer Is Not Permitted to Receive Compensation for Referrals

In addressing the question presented, we first clarify that there are several potential lawyer statuses at issue in Connecticut.

The Connecticut Practice Book distinguishes among retired, permanently retired, and inactive attorneys. A retirement granted pursuant to Practice Book Section 2-55 is revocable at any time upon notice to the Hartford judicial clerk and statewide bar counsel. Upon retirement, an attorney will be exempt from paying the client security fund fee required by Practice Book Section 2-70(a), but the attorney must continue to comply with the registration requirements required by Practice Book Sections 2-26 and 2-27(d). Such retirement “shall not constitute removal from the bar or the roll of attorneys.” Practice Book Section 2-55(a). While the retired lawyer will not be eligible to practice law for compensation, she may thereafter engage in uncompensated services to clients under the supervision of an organized legal aid society, a state or local bar association project, or a court-affiliated pro bono program. *See* Practice Book Section 2-55(e).

A permanent retirement, granted pursuant to Practice Book Section 2-55A, is not revocable for any reason. Upon permanent retirement, an attorney will be exempt from paying the client security fund fee required by Practice Book Section 2-70(a) and will no longer have to comply with the registration requirements required by Practice Book Sections 2-26 and 2-27(d). Practice Book Section 2-55A(a) provides that permanent retirement “shall not constitute removal from the bar or the roll of attorneys,” but a permanently retired

² *See also* Informal Opinion 13-04 (explaining that “[e]ven though a referring attorney is required neither to provide services in nor to assume joint responsibility for the representation in the referred case, . . . Rule 1.5(e) by necessary implication requires that *each lawyer receiving a fee from the representation of a client establish a lawyer-client relationship with the client and, as an attorney for the client, be bound by the Rules of Professional Conduct, even if the scope of the lawyer-client relationship is the referral itself.*”) (emphasis added).



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attorney may no longer practice law in Connecticut under any circumstances without reapplying for admission to the bar pursuant to Practice Book Sections 2-8 or 2-13. Practice Book Section 2-55A(c).

Finally, an inactive attorney is an attorney placed on inactive status by court order pursuant to Practice Book Section 2-57, 2-58, or 2-59. An inactive attorney is considered among a class of “deactivated attorneys” under Practice Book Section 2-47B. Although not expressly stated in the pertinent Practice Book provisions, it is presumed that an inactive attorney remains a member of the Connecticut bar. *See* Practice Book Section 2-60 (inactive attorney may seek reinstatement). Pursuant to Practice Book Section 2-56, however, an attorney placed on inactive status “ shall be precluded from practicing law” in Connecticut.

In summary, a permanently retired lawyer or a lawyer placed on inactive status may not engage in the practice of law. In comparison, a retired lawyer may engage in uncompensated services to clients when supervised by an organized legal aid society, a state or local bar association project, or a court-affiliated pro bono program.

Regardless of which status would apply to the requestor, however, it is clear that he could not continue to accept referral fees for cases. Because the provision of referrals by lawyers is considered the practice of law, as discussed above, and because permanently retired attorneys and attorneys on inactive status may not engage in the practice of law, these two classes of attorneys are prohibited from providing referrals in their capacity as lawyers. (Therefore, they cannot take advantage of Rule 1.5(e)’s fee-splitting exception to the prohibition against the payment of referral fees.) And, while a retired attorney is permitted to engage in certain uncompensated legal services post-retirement, the rules are clear that they must be just that—uncompensated. Thus, this category too would not permit the receipt of a referral fee post-retirement.

In sum, we conclude that the Rules of Professional Conduct would prohibit a retired or inactive attorney from continuing to receive referral fees for matters referred after he ceases practicing law.

THE COMMITTEE ON PROFESSIONAL ETHICS

Kim E. Rinehart

BY Kim Rinehart, Chair

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