



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in July 2010. Please see the 2010 Illinois Rules of Professional Conduct 5.3 and 7.2(b) with its Comments [5-8]. See also ISBA Ethics Advisory Opinion 88-8. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

**Opinion Number 827
(April 9, 1983)**

**Topic: Recommending Professional
Employment; Utilizing Services of Referring
Organization; Contributions to Referring
Organizations.**

Digest: An attorney may not, pursuant to an arrangement with an organization which refers work to the attorney, employ the clerical or paralegal services of that organization for compensation, nor may the attorney make voluntary periodic contributions to that organization.

Ref: Canons 2 and 3
Rules 2-103(d); 3-101(b)
EC 2-8

FACTS

A tenants' organization proposes to refer its members' claims to the inquiring attorney for handling on a contingent basis. The organization has requested the attorney to employ the clerical and paralegal services of the organization in connection with referred claims.

QUESTIONS

- (1) Whether the attorney may employ and compensate the organization for clerical services on either a contingent or non-contingent basis?
- (2) Whether the attorney may employ and compensate the organization for paralegal services?
- (3) Whether the attorney may make voluntary contributions to the organization on a periodic basis?

OPINION

- (1) Rule 2-103(d) provides that:

"A lawyer shall not promise or give another person anything of value to initiate contact with a prospective client on behalf of the lawyer."

The employment for compensation of the organization's clerical services would be "of value" to the organization which, as the inquiry points out, needs the money to help fund its operations. Accordingly, although the attorney may employ the clerical services of the organization on an ad hoc basis, he may not do so pursuant to an arrangement whereby such employment is a condition to, or in consideration of, the referrals by the organization.

- (2) The foregoing considerations apply equally to the employment for compensation of the organization's paralegal services. In addition, Rule 3-101(b) provides that:

"A lawyer may delegate work to a non-lawyer employed by him if the lawyer in fact supervises the non-lawyer and assumes complete responsibility for the work of the non-lawyer."

Although the paralegal work provided by the organization may be subject to the supervision of the attorney, and although the attorney may assume responsibility for the paralegal work product, the fact that the paralegal is the employee of the organization rather than of the attorney would preclude him from utilizing that service, pursuant to the aforesaid Rule. The Committee Commentary to the Rule also refers to the requirement that the paralegal be employed by the attorney.

- (3) EC 2-8 provides that:

"A lawyer should not compensate another person for recommending him, for influencing a prospective client to employ him, or to encourage future recommendations."

A voluntary contribution by the attorney to the organization would not appear to violate the literal requirements of Rule 2-103(d) or of ED 2-8. However, if such contributions are made on a "periodic" basis, it would be difficult to believe that they were not being made pursuant to a

tacit arrangement in consideration of the referral work. Accordingly, this Committee is of the opinion that the intent of Rule 2-103(d) would be violated by such a practice.