



# ISBA Professional Conduct Advisory Opinion

---

**Opinion No. 12-03**  
**January 2012**

**Subject:** Advertising and Solicitation; Confidentiality; Referral Fees and Arrangements

**Digest:** A lawyer may participate in a networking group with other service professionals which refers clients to one another if: (a) the reciprocal referrals are not exclusive; (b) the lawyer requests prior consent from the client to give his or her name to someone in the networking group, although the better practice might be for the lawyer to give the name of the other “professional” to the client; (c) the client is informed of the existence of the referral agreement between the lawyer and the non-lawyer professional; and (d) the referral arrangement does not interfere with the lawyer’s professional judgment as to making the referral or providing substantive legal services.

**References:** Illinois Rules of Professional Conduct 1.6(a), 2.1, 5.4, 7.1, 7.2, 7.3;

ISBA Professional Conduct Advisory Opinion No. 97-01;

ABA Formal Opinion No. 09-455;

New York Rules of Professional Conduct 7.1(b)(2).

## **FACTS**

A group of business and professional people in a community has organized a not-for-profit organization open to members who are interested in “networking” to obtain business contacts. Members attend weekly meetings to describe to each other the services their business offers and to exchange the names and telephone numbers of persons with whom the members have had contact and who might be in need of the services of other members. It is contemplated that members who receive the names and telephone numbers of leads from other members will then contact those leads. There is an initiation fee and a monthly fee to remain a member. The funds collected are allocated each week to a different member of the organization to advertise that member’s business in a local newspaper or journal.

## QUESTION

A lawyer interested in joining the “networking” group has inquired whether participation in its activities would violate the Illinois Rules of Professional Conduct (“RPC’s”).

## OPINION

The lawyer may participate in the networking group, albeit with certain restrictions to ensure the lawyer complies with the RPC’s.

With respect to the networking group itself, RPC 7.2(b) 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:

- (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
- (2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service;
- (3) pay for a law practice in accordance with Rule 1.17; and
- (4) 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
  - (i) the reciprocal referral agreement is not exclusive, and
  - (ii) the client is informed of the existence and nature of the agreement.

Comment 8 to RPC 7.2 provides that while a lawyer “may agree to refer clients to another lawyer or nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer,” this arrangement “must not interfere with the lawyer’s professional judgment as to making referrals or as to providing substantive legal services.” This Comment references RPC 2.1, which requires a lawyer to “exercise independent professional judgment” as well as RPC 5.4, which bars a lawyer from allowing a person who recommends his or her services to “direct or regulate the lawyer’s professional judgment in rendering such legal services.”

A further consideration is whether the lawyer breaches RPC 1.6(a) if the lawyer were to provide his or her client’s name and telephone number to another lawyer or to a nonlawyer professional member of the networking group. With some exceptions that do not apply to the fact scenario, RPC 1.6(a), which governs “Confidentiality of Information,” provides, in pertinent part, that a “lawyer shall not reveal information relating to the representation of a client.” Comment 1 to RPC 1.6 states that the Rule “governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer’s representation of a client.” Although

the RPC's do not specifically address whether a client's identity is considered "confidential information," it appears from other ethics opinions that this is so.

For example, ABA Formal Opinion 09-455 considered the disclosure of client identities for conflicts purposes. Citing the definition of information covered by Model Rule 1.6(a), which is "all information relating to the representation, whatever its source," ABA Formal Opinion 09-455 then opined that that "*the persons* and issues involved in a matter generally are protected by Rule 1.6 and ordinarily may not be disclosed unless an exception to the Rule applies or the affected client gives informed consent" (Emphasis added). See also RPC 1.6, Comment [3]. Further, with respect to client referrals, ISBA Advisory Opinion 97-01 (1997) concluded that a lawyer may give the names of his clients to a bank as potential customers for banking services, but must first obtain consent of his or her clients to do so. See also Rule 7.1(b)(2) of the New York Rules of Professional Conduct (noting that an advertisement may include information as to "names of clients regularly represented, provided that the client has given prior written consent"). Accordingly, an attorney should consider his or her client's identity to be confidential information which cannot be disclosed without the client's consent.

Thus, the lawyer's participation in the networking group in question is permissible under RPC 7.2(b)(4) and RPC 1.6 provided that: (a) the reciprocal referrals are not exclusive; (b) the lawyer requests prior consent from the client to give his or her name to someone in the networking group, although the better practice might be for the lawyer to give the name of the other "professional" to the client; (c) the client is informed of the existence of the referral agreement between the lawyer and the non-lawyer professional; and (d) the referral arrangement does not interfere with the lawyer's professional judgment as to making the referral or providing substantive legal services.

With respect to initiation fees and monthly fees paid by the lawyer for membership in the networking group, those funds are used to advertise a different member's business in a local newspaper or journal each week. Because those funds will be used to pay the lawyer's "reasonable costs of advertisements or communications," as permitted by RPC 7.2(b), this does not violate the rule that a lawyer "shall not give anything of value to a person for recommending the lawyer's services." The advertisements should comply with RPC 7.1, in that they should not be false or misleading.

In regard to contacting potential clients to whom the lawyer is referred by other members of the networking group, RPC 7.3(a) is relevant and provides as follows:

A lawyer shall not 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; or
- (2) has a family, close personal, or prior professional relationship with the lawyer.

RPC 7.3(c), however, does permit a “lawyer to solicit professional employment from a perspective client known to be in need of legal services in a particular matter” if the words “Advertising Material” appear on the outside of the envelope or at the beginning or ending of a recorded or electronic communication, unless the recipient of the communication is a person specified in RPC 7.3(a)(1) or (a)(2).

Accordingly, to the extent that the networking group contemplates that the lawyer will contact directly by phone, in person, or by real-time electronic contact, the potential clients to whom the lawyer is referred, such contact would violate RPC 7.3(a). It would, however, be permissible for the lawyer to contact the potential client by mail or by recorded or electronic communication, provided the words “Advertising Material” appear on the envelope or communication as provided by RPC 7.3(c). Accordingly, the lawyer participating in the networking group should obtain the mailing and email address for the potential client, rather than just the client’s phone number.

---

**Professional Conduct Advisory Opinions are provided by the ISBA as an educational service to the public and the legal profession and are not intended as legal advice. The opinions are not binding on the courts or disciplinary agencies, but they are often considered by them in assessing lawyer conduct.**

© Copyright 2012 Illinois State Bar Association

G:\LEGAL\Opinions 2012\12-03.doc