



# ISBA Professional Conduct Advisory Opinion

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**Opinion 22 – 02**

**May 2022**

**Subject:** Advertising & Solicitation; Sharing Fees with Nonlawyers

**Digest:** A for-profit lawyer-client “match” service may comply with the Illinois Rules of Professional Conduct if (1) the matches are automated and completed without discretion on the part of the service as to what lawyer to match with a potential client; (2) the service does not endorse or vouch for the lawyer’s services, or hold itself out as such; (3) the service is not involved in any resulting attorney-client relationship that is formed after a “match”; and (4) any fees paid by the lawyer to the service are reasonable and unrelated to the services the lawyer provides to the client identified through the service. However, after a lawyer has initially decided that their participation in such a service complies with the Illinois Rules of Professional Conduct, the lawyer should evaluate, as frequently as is reasonable and including when asked to decide to renew their contract with the service or when provided information about changes to the service, whether their participation will continue to comply with the Rules. A lawyer must end their involvement with the service if and when they learn it violates the Illinois Rules of Professional Conduct.

**References:** Illinois Rules of Professional Conduct 1.18, 5.4, 7.1, 7.2, and 7.3  
ISBA Advisory Opinion No. 94-12 (1994)  
Texas Ethics Opinion No. 573 (2006)  
Virginia State Bar Ass’n Legal Ethics Opinion No. 1885 (2018)  
Rhode Island Supreme Court Ethics Advisory Panel Opinion No. 2005-01 (2005)

## **FACTS**

The Committee received an inquiry concerning an online service that purports to be a matching company that offers methods for connecting people in need of legal services with attorneys who may be able to represent them. The inquiring attorney states that the match service approached the attorney’s law firm with a proposed attorney membership agreement. Under the proposed agreement, the law firm would pay the match service a monthly fee in exchange for the match service notifying the firm of clients seeking help in the law firm’s field of practice in a certain geographic area. The inquiring lawyer reports that (a) the monthly fee is

fixed and does not depend on whether any client retains the law firm or the law firm receives any fees from clients identified through the service, and (b) no portion of the fee the law firm obtains for representing a client identified through the service is paid back to the match service. Rather, the match service's sole compensation from the law firm is the fixed monthly fee, which the inquiring lawyer describes as an "advertising fee."

The service operates by matching consumers seeking legal services with member attorneys in a general geographic location. The service is free to the consumers. Consumers respond to a questionnaire, which the service's algorithm automatically sends to lawyers who the algorithm identifies as focusing on the relevant area of law and practicing in the consumer's market. Within 24 hours, lawyers review and evaluate the questionnaire. If an attorney is interested in representing the consumer, the attorney can respond with an offer and an attorney profile, including information on their fee structure, background, and ratings from other match service users. Consumers then decide whether to communicate with or engage particular attorneys. The service does not become involved in these communications after the initial contact between an attorney and a potential client is made. The service informs users/prospective clients that attorneys pay a membership fee to be part of the match service.

The match service pre-screens potential member lawyers in a limited manner by setting membership standards, which require attorneys be in good standing with their state's bar authority and passing a background and disciplinary check. The match service also provides a user-created lawyer rating system, through which potential clients can read reviews of particular lawyers from previous clients. The service explicitly disclaims rating, ranking, or otherwise recommending specific lawyer members. The service also disclaims any responsibility to monitor to ensure that member attorneys remain licensed and in good standing. Potential clients are "matched" with lawyers through the service's intake system software based on an intake questionnaire completed by the consumer. The attorney receives the client's name and contact information only if both parties would like to speak to one another or the prospective client has opted to include the information on the questionnaire.

### **QUESTION**

Do the Illinois Rules of Professional Conduct permit lawyers to participate in a for-profit online lawyer-client "match" service?

### **DISCUSSION**

#### **I. Lawyer Advertising.**

The first issue is whether use of the for-profit online lawyer-client match service complies with the Illinois Rules of Professional Conduct that relate to lawyer advertising. The Committee believes that, on the specific facts set forth in this opinion, the service satisfies Rule 7.2 because it is an advertising service or lead generator and not a prohibited for-profit legal referral service.

Rule 7.2 broadly bars lawyers from “giv[ing] anything of value to a person for recommending the lawyer’s services,” except in instances listed in Rule 7.2(b)(1) through (b)(4). Ill. R. Prof’l Conduct 7.2; *see also* ISBA Advisory Opinion No. 94-12 (1994) (finding participation in a for-profit lawyer referral program violates Rule 7.2). The lawyer-client match service is a for-profit company that requires lawyers to pay to participate in its service, which gives the lawyer the opportunity to be connected to potential clients. Accordingly, whether the match service satisfies Rule 7.2 turns on whether it requires lawyers to give something “of value” in exchange for “recommending the lawyer’s services.”

Based on the facts set forth in this opinion, the match service does not appear to “recommend[]” any particular lawyer’s services. Comment 5 to Rule 7.2 states in relevant part, “[a] communication contains a recommendation if it endorses or vouches for a lawyer’s credentials, abilities, competence, character, or other professional qualities.” Ill. R. Prof’l Conduct 7.2, cmt. 5. The presence of an intermediary who exercises discretion when making matches is a traditional feature of a referral service that recommends particular lawyers to potential clients. For example, a referral service may operate with an intake worker who answers a potential client’s phone calls and then decides which lawyers to connect with certain clients based on stated criteria. *See* Texas Ethics Opinion No. 573 (2006) (distinguishing the automated features of an Internet lawyer-client connection service from the discretion that characterizes traditional referral services, and determining a lawyer may pay a fee to participate in such an automated Internet service). A computer system that automatically creates matches based on client input and without human intervention functions without an intermediary exercising discretion.

The process by which the match service described in this opinion links potential clients to potential lawyers does not select the specific lawyers who will contact the potential client, nor does it direct potential clients to specific lawyers:

- First, the match service’s intake system software automatically matches a consumer’s case, which the consumer described on an intake questionnaire, to its member lawyers who directly correspond to that consumer’s criteria.
- Second, the match service appears to avoid the implication of endorsing lawyers listed on a publicly available directory. The match service does advertise itself as having screened lawyers in a limited sense as noted above, but it also states that it never selects a lawyer for the consumers using the service.
- Third, although the match service automatically matches potential clients with potential lawyers based on criteria identified by the potential client in the online questionnaire, the lawyers—not the match service—ultimately decide whether to contact the potential client.

This chain of events does not suggest that the match service, at any point in time, is exercising discretion over which lawyers will receive the potential client inquiry or which lawyers will end up contacting the potential client. As a result, the match service is more akin to

advertising than a referral service that is prohibited under Rule 7.2. Comment 5 to Rule 7.2 supports this analysis. That Comment states in relevant part:

*...[A] lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, 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.*

Ill. R. Prof'l Conduct 7.2, cmt. 5 (emphasis added). Consistent with Comment 5, lawyers pay the match service a reasonable fee to be included among the directory of lawyers, which is accessible to the match service rather than potential clients, in exchange for receiving intake questionnaires from potential clients. Each intake questionnaire is a lead for potential representation. If a lawyer desires to act on any leads, that lawyer must initiate contact with those potential clients.

The analysis of the match service under the Illinois Rules of Professional Conduct is fact-intensive. Different facts, such as a different manner of structuring to the online matching service, could make the service a prohibited referral service. For example, a match service in which the algorithm could be influenced, such as by paying additional fees, to provide particular lawyers with greater exposure to potential clients may be more like an impermissible for-profit referral service. In addition, a lawyer using a match service should remain cognizant of how the service works and any changes to the service that could affect how or whether the service complies with the Illinois Rules of Professional Conduct—and to end involvement with the service if it changes in such a way that it violates the Rules. The lawyer also remains responsible for understanding how the service is holding out the lawyer to potential clients and for evaluating whether the service is complying with applicable rules governing lawyer advertising.

## **II. Solicitation of Clients.**

The second issue is whether use of the match service complies with the Illinois Rules of Professional Conduct that relate to solicitation of clients. The Committee believes that, under the facts set forth in this opinion, the service satisfies Rule 7.3.

Rule 7.3 generally prohibits lawyers from “solicit[ing] professional employment” by “in-person, live telephone or real-time electronic contact” unless the recipient of the lawyer’s solicitation is one of the people identified in Rule 7.3(a)(1) to (a)(2). Ill. R. Prof'l Conduct 7.3. Comment 1 to Rule 7.3 defines solicitation as “a targeted communication *initiated by the lawyer*

that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services.” *Id.*, cmt. 1 (emphasis added).

A lawyer’s initial communication through the match service does not constitute the solicitation of clients. Consumers of the match service seek legal services by presenting their case through online intake questionnaires with a purpose of distributing the questionnaire to lawyers who may respond and offer their services. Lawyers who use the match service send targeted responses directly to potential clients who initiated communication with the match service. This sequence of actions is akin to a potential client calling a lawyer’s office seeking representation. Rule 7.3 does not bar a lawyer from answering a potential client’s phone call seeking services and, likewise, does not bar lawyers from responding to client-initiated communications filtered through the match service. Although these targeted communications offer legal services, the consumer initiates contact; thus, they are not solicitations subject to Rule 7.3.

### **III. Lawyer’s Professional Independence**

The third issue is whether the use of the for-profit online lawyer-client match service complies with the Illinois Rules of Professional Conduct that relate to the professional independence of a lawyer and lawyer fees. Based on the specific facts set forth in this opinion, the match service does not appear to violate Rule 5.4’s prohibition on fee-sharing with nonlawyers, nor is there any indication that it otherwise attempts to interfere with the lawyer-client relationships that are formed by linking a lawyer with a client through the match service.

Rule 5.4(a) proscribes sharing legal fees with nonlawyers, other than under the circumstances outlined in Rule 5.4(a)(1) through (a)(4). In contrast, Rule 7.2(b)(3), discussed above, allows a lawyer to “pay the reasonable costs of advertisements or communications.” Impermissible fee sharing between lawyers and nonlawyers is distinguishable from paying the reasonable costs of advertising.

The match service does not appear to require participating lawyers to share legal fees with nonlawyers. Arrangements that link a fee to a lawyer’s profit earned from offered legal services likely would violate Rule 5.4. *See, e.g.,* Virginia State Bar Ass’n Legal Ethics Opinion No. 1885 (2018) (concluding online lawyer-client matching service fee structure, which connected the service’s marketing fee to the amount of legal fees paid by the client, violated rules prohibiting sharing fees with nonlawyers). Although lawyers pay a membership fee to participate in the match service described in this opinion, the flat fee is unrelated to whether the lawyer obtains clients, the type of work the lawyer performs, or the fees charged by the lawyer for the work. Rather, the membership fee buys lawyers access to consumers’ intake questionnaires, and that resembles an advertising service as described above. The membership fee thus is essentially a reasonable cost of advertising, which Rule 7.3 permits, and not fee sharing that violates Rule 5.4. *Accord* Rhode Island Supreme Court Ethics Advisory Panel Opinion No. 2005-01 (2005) (holding a match service’s membership fee represented the reasonable costs of advertising and was not impermissible fee-sharing with nonlawyers).

In addition, once a lawyer contacts a potential client who is identified through the match service, the match service essentially steps out of the picture to allow the lawyer and client to determine whether it is appropriate to form an attorney-client relationship and then to operate under that relationship. As such, it does not appear that the match service injects itself into the middle of the attorney-client relationship in a manner that might violate the lawyer's obligation to maintain professional independence under Rule 5.4.

#### **IV. Confidentiality & Prospective Clients.**

Another issue relevant to whether the match service complies with the Illinois Rules of Professional Conduct is how the match service handles the confidentiality issues associated with information the potential clients may provide in order to be matched with potential lawyers. The Committee does not believe that the service's mere transmission to lawyers of information from a user seeking legal services means the user is a "prospective client" of the lawyer for purposes of Rule 1.18 and the obligations imposed by that rule.

Nonetheless, a lawyer evaluating whether to use a match service should be aware of how the service instructs those who need legal assistance to make the inquiry that triggers the service's effort to match the user with a lawyer. The service described in this opinion warns users not to provide confidential, personal, incriminating, or sensitive information in the initial inquiry and also tells users that the service cannot guarantee the confidentiality of the information provided in the initial inquiry. Such disclaimers can help mitigate the likelihood that the lawyer will receive information that might suggest the user has become a prospective client under Rule 1.18 before the lawyer has actually responded to a potential client's inquiry submitted to the match service.

#### **CONCLUSION**

Based on the facts presented in this opinion, a lawyer does not violate the Illinois Rules of Professional Conduct by paying a fee to participate in a for-profit online lawyer-client "match" service of the kind described in this opinion. However, after a lawyer has initially decided that their participation in such a service complies with the Illinois Rules of Professional Conduct, the lawyer should evaluate, as frequently as is reasonable and including when asked to decide to renew their contract or when provided information about changes to the service, whether their participation will continue to comply with the Rules. A lawyer must end their involvement with the service if and when they learn it violates the Illinois Rules of Professional Conduct.

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