

Minutes

Attorney Referral Fees Committee

Meeting Date: May 30, 2018
Location: OSB Center, Tigard
Chair: Kurt Hansen
Members present: Vanessa Nordyke, Ankur Doshi, Erin Pettigrew, Thomas Christ, Steven Berman, Scott Howard, Catherine Yao, Leigh Gill, Helen Hierschbiel
Members via phone: Rep. Karin Power, Michael O'Brien, Tara Millan, Jermaine Brown, Sarah Litowich, Erin Zemper, Michael Rondeau, Richa (Legislative Assistant, Rep. Karin Power)
Staff Members: Susan Grabe, Kellie Baumann (OSB)
Kyle Sharp (Vanessa Nordyke's law clerk)

1. **Basic Models of Online Legal Service Providers.** Leigh Gill described the three basic models of online legal service providers:

- Marketing model (directories, search engines, matching services)
- Document provider
- Non-profit bar sponsored lawyer referral service

2. **Ethics Conundrum.** Ankur Doshi explained the ethics conundrum:

- Under ORPC 7.2(b)(2) a lawyer may pay the "usual charges" of a lawyer referral service
- Under ORPC 5.4(a)(5), however, lawyer may not "share legal fees" with a nonlawyer
- Discussed interpretation of "usual charges" provided in ethics opinions. It has to bear some relationship to the marketing/advertising service provided rather than to whether a client actually hires the lawyer or the value of the legal services.
- Discussed interpretation of "share legal fees" in ethics opinions.

3. **Concerns about these models:**

- More people not necessarily reached
- Communication not protected by attorney-client privilege
- Third party acting as intermediary between lawyer and client in establishing the relationship (It was noted that Google already does that with its search engine, and that the yellow pages did that before.)
- No definition of lawyer referral service
- How does fee-sharing make a difference in access to justice? What is the net gain of allowing fee sharing? No empirical data to show the impact.
- Increase in attorney fees in order to make up for loss of fees in lawyers pockets
- Adverse effect on lawyer's independent judgment. Why wouldn't third parties want to

pressure lawyers to handle cases in a particular way?

- Profit incentive does not recognize lawyer fiduciary obligations to clients

4. Alternative amendments to consider:

- What if we allowed lawyers to pay for advertising based on effectiveness of advertising (whether or not the client actually hires the lawyer), but require some flat fee rather than percentage of fee that lawyer earns?
- Why not allow fee sharing but on a fixed fee base. Pay per client that signs up as opposed to paying per lead or paying a percentage of the legal fees?

5. Additional information needed:

- Can we have someone come in and talk to us more about the business incentives, so that we understand better why/how a new model might improve access to justice?
- What are the non-profits doing versus the for-profit?
- How would a third-party referral impact how the case proceeds?
- If we put 100 referrals out, how many turn into fee-paying clients? Statistics around lawyer referral services that exist currently and effectiveness in matching client needs to lawyers.
- Are other legal service organizations regulated and if so, how?
- What would it look like if we allowed fee sharing only in cases where it's flat fees or hourly fees, rather than contingent fees?

9. Next meeting: June 2018

Doodle Poll will be sent to determine the best date and time.