

Minutes

Attorney Referral Fees Committee

Meeting Date: June 20, 2018
Location: OSB Center, Tigard
Acting Chair: Thomas Christ
Members present: Michael O'Brien, Steven Berman, Robert C. Kline, John Grant III, Vanessa Nordyke, Catherine Yao, Leigh Gill,
Members via phone: Angela Lee-Mandlin, Jermaine Brown, Erin Zemper, Ankur Doshi, Scott Howard, Rep. Karin Power, Mika Blain, Richa (Legislative Assistant, Rep. Karin Power)
OSB Staff Members: Helen Hirschbiel, Susan Grabe, Kellie Baumann, Ravyn Goss
Also Present: Patrick Palace, Palace Law

1. Minutes from May 30, 2018 meeting approved by consensus.

2. Written complaints received by DOJ

Mr. Brown, from the DOJ Civil Enforcement Financial Fraud Division, provided an overview of the written complaints received by the DOJ regarding AVVO, Legal Shield, Legal Zoom and Rocket Lawyer.

- He informed the committee there are three categories of complaints:
 1. Allocation of fault or misleading claims of services offered by companies – 4 complaints
 2. Pricing related complaints - dispute as to charges, charges adequately disclosed – 4 complaints
 3. Dissatisfaction about overall quality of services provided by law firm provider - 3 complaints

- Resolution of complaints depends on the type/substance of complaint.

Most consumer complaints received are sent to the business that is subject of the complaint. DOJ asks the business to respond to the complaint within 60 days and explain what happened. If the business feels it is appropriate, they offer a resolution.

Generally, complaints against attorneys are referred to the bar.

Advertising, pricing scams are within DOJ jurisdiction. Quality of service concerns are not. Business to business issues also generally not within DOJ jurisdiction.

- Statistics of written complaints versus telephone complaints

The total number of written complaints to DOJ is somewhere between 8,000 and 12,000 per year. Of those, 13 total written complaints about AVVO, Legal Shield, Legal Zoom and Rocket Lawyer. None against ARAG.

DOJ has a consumer hotline where consumer can call and ask questions. They receive around 13,000 or so calls a year. If the hotline staff believes the consumer concern may be an issue for DOJ, they direct the consumer to submit a complaint in writing.

3. Patrick Palace.

- Mr. Grant introduced Mr. Palace. Mr. Palace served on the Washington State Bar Association (WSBA) Board of Governors 2008-2011 and as president of the WSBA in 2013-2014. He also chaired the WSBA Future of the Profession Committee 2013-2015. He is currently serving on the executive council of the National Conference of Bar Presidents (NCBP). He owns his own law firm in Tacoma, WA, where he practices workers' compensation and personal injury law. He is also a client of Mr. Grant.
- Mr. Palace provided an overview of his experience with and perspectives on rapid changes in the legal profession and the delivery of legal services. Things are happening fast, and we risk being swamped by change if we fear leading. In his view, lawyers are good at practicing law, but not necessarily good at marketing, investment, technology, process improvement. Others are better suited to marketing and identifying technological solutions. Lawyers are also not necessarily good at figuring out how to make legal services more affordable and that is the question we should be asking in order to increase access to justice.
- The committee discussed the following issues:
 - Is fee sharing with these companies necessary? What is wrong with the model of advertising used by lawyers now? How would fee sharing increase access to justice?
 - If lawyers were doing a good job marketing and providing services at affordable prices, we wouldn't have the access to justice crisis that we have. Access to justice is not whether lawyers are getting clients, but whether clients are getting lawyers. We can only say we are doing well when everyone who wants a lawyer gets one.
 - Lawyers don't have tools to lower cost or provide services online. Online legal service providers and lawyer referral entities open doors for people to be able to find lawyers and for lawyers to help those consumers. If sharing fees is necessary to opening those doors, then so be it. We are a one man corporation trying to do an enormous business one by one rather than doing it in a group.
 - Is there data available to support the proposition that sharing lawyer fees increases access to justice?
 - There is no data to show that fee sharing increases access because no one is doing it. Rules of professional conduct across the country prohibit it. Someone needs to take the first step.
 - What about data from the LRS? Do we have a before and after picture there? How many people were served pre- and post- percentage fee model?
 - We have data post-percentage fee model. Will have to investigate whether we have pre-percentage fee model.
 - Concerns were raised that if non-lawyer third parties are part of the referral, they will exert pressure on the lawyer to settle or handle a case differently. Because third parties are not constrained by the same rules as lawyers, they don't have the same fiduciary obligations to clients. If sharing a fee, wouldn't the company tell a lawyer how to do their job?
 - Every time there is an issue on sharing fees, it becomes a battle. But we are doing it already. Lawyers share fees with credit card companies when they accept a credit

card payment and pay 4% to the company. Do we lose control because we share a portion of our legal fee with the credit card company? No. We have in-house counsel who work for large corporations and we don't worry that they have lost their independent judgment simply because they are employed by the company. If you have a line of credit at the bank in order to fund a case, do you have concerns that the bank will force you to settle a case? No.

- Is the system we have really any different than the proposal we are discussing? How do you differentiate between credit lenders and investors in the law? We won't reject a line of credit from a bank to help a case because we believe they will influence us. If the bank should try to have some influence, the lawyer would say no. I don't see what leverage the bank will have to make the lawyer change their actions in their case or somehow threaten the lawyer's obligations under the rules of professional conduct.
- Online referral/matching entities not regulated by the bar or attorney general. How will consumers be protected? The Illinois Supreme Court ARDC report is considering a rule change that would put the bar in charge of maintaining a registration of referral services looking to split fees with attorneys. Thoughts about experimenting with this system?
 - A registry would be a good safety mechanism for consumers by providing information to clients about referral entities and controlling excessive fees. There would be administrative costs, but it could be done efficiently. If a company becomes problematic, warn consumers that this is a provider causing problems. The point is to start by creating new rules. It just takes one state to be the first one to try a rule, and if there is an issue, you tweak the rule. You don't have to have all of the answers before making a rule.
 - The bar doesn't have the statutory authority to regulate these businesses and would have to seek a legislative change.
- What if we allowed fee sharing that was not a percentage of the lawyer fee, but just a flat fee based on whether a client hired a lawyer? It would avoid the independent judgment concerns.
 - It's a consumer driven market, and the market will give the answers. We already know it works because the first page in Google is almost all of the LRS systems that lawyers already linked to for cases. Firms that advertise on their own, start on the top of page 2. Whether it's a percentage fee or a flat fee – whichever helps create a better market for lawyers and allows more consumers to be helped. Taking a step and making a decision is the most critical.

3. Data on OSB Lawyer Referral Services

- Ms. Hirschbiel provided the following LRS data for 2017:
 - 47,000 referrals made
 - 47% made no contact with the lawyer
 - 48% contacted and had consultation but did not retain lawyer further
 - 5% retained lawyers and paid fees

4. Comparison to HMO insurance

- The committee discussed whether there was any comparison to the advent of managed care and HMO insurance, and the development of online service provider options. Observation that these are different platforms HMOs pay monthly fee and AVVO is more like a match making service than a HMO.
- If they were not working wouldn't market forces eliminate them?

5. Steve Berman's Email Correspondence to Committee Chair Kurt Hansen:

- Mr. Berman summarized the concerns expressed in his email. First, he is concerned about imposing too tight a timeline that does not allow for full exploration of issues and alternatives. He does not want to just rubber stamp what was done before and bring it back to HOD. Second, he is concerned about transparency around potential conflicts of interest. Are there individuals on the committee who are being paid to be there?
- Ms. Hirschbiel assured the committee that there is no strict deadline for it to submit a report to the BOG. If, however, they want to present a proposal to the HOD in 2018, it will need to be approved by the BOG no later than its September 21, 2018 meeting.

With respect to conflicts, it is evident that there are individuals on the committee who use AVVO's services. Ms. Hirschbiel is not aware of whether anyone is being paid by AVVO. Helen suggested doing some sort of conflict disclosure at the next meeting.

Ms. Hirschbiel noted that a public records request last fall sought documents of any payments made by AVVO or Legal Zoom to discover whether the Bar may have some financial interest in the proposed changes to RPC 7.2 and 5.4. That request revealed no payments and no deals between AVVO or Legal Zoom and the OSB. Representatives from those companies were invited to speak to the Futures Task Force to address questions about the models they used and how their processes work. Ms. Hirschbiel expressed her commitment to transparency around this process.

Ms. Hirschbiel noted that she does attend national conferences on professional responsibility and bar organization management. She has had conversations with folks from AVVO, Legal Zoom and other online legal service providers during those conferences and since then. Dan Lear was a panelist during the OSB Futures Conference in July 2016 as well.

- Mr. O'Brien noted that he has paid lots of money to these various services. You are paying per lead, not per client that actually retains you, and the return on the investment is not that great. Do we have lawyers who have five or less years of experience on this committee? Do they have a different opinion versus those who have been here for 20 years?
- Mr. Christ says he believes we can get the work done in a more expeditious manner. He suggested that we have narrowed the possibilities to three options:
 1. Do nothing - leave rule as is - allows pay per lead
 2. Allow payment of a flat fee per client
 3. Allow payment of a percentage of lawyer fee (non-contingency fee cases only?)

Mr. Christ suggested that the committee come to a decision on which of these three to recommend.

- Mr. Kline would like there to be a written disclosure from all committee members about

whether anyone represents a third party company like AVVO or Legal Zoom.

- Mr. Berman offered to work with Ms. Hirschbiel on some possible conflict disclosure language.
- Ms. Hirschbiel offered to come up with some draft language for potential amendments to the rules that reflect the different options discussed by the Committee thus far.

6. **Next meeting:** July 18, 2018 from 1:00pm – 3:00pm