

Minutes

Attorney Referral Fees Subcommittee

Meeting Date: October 23, 2018

Location: Conference Call

Members via phone: Tom Christ, Steve Berman, Leigh Gill

OSB Staff Members: Susan Grabe, Matt Shields, Kellie Baumann

1. The subcommittee members present on the call began by comparing Steve Berman's edits to Option 2 to the Google Document Option 2

2. The subcommittee discussed 6 (iii) and if the language in the rule is needed. The language came from the Futures Task Force Report and the original change to 5.4 suggested to HOD. The subcommittee decided to keep the wording in the option to bring back to the full committee for a discussion.

3. The subcommittee members worked on further wordsmithing of the existing Option 2 language from the Google Document until they decided on the ultimate language to bring back to the full committee.

4. The Option 2 language to bring back to the full committee is as follows:

RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm or firm members may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons.

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price.

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter; and

(5) a lawyer may pay the usual charges of a bar sponsored or operated not-for-profit lawyer referral service, including fees calculated as a percentage of legal fees received by the lawyer from a referral.

(6) a lawyer may pay the usual charges of a for-profit lawyer referral service for referral of a matter, only if:

(i) the amount of the payment is not based on the amount of the legal fees received by the lawyer from the referral;

(ii) the lawyer discloses to the client in writing at the outset of the representation the amount of the payment to the lawyer referral service and the nature of the lawyer's relationship with the lawyer referral service;

(iii) the total fee for legal services rendered to the client combined with the amount of the payment would not be a clearly excessive fee pursuant to Rule 1.5 if it were solely a fee for legal services; and,

(iv) the fee charged by the lawyer to the client is not contingent on the outcome of the matter.