

DONALD E. COVEY

Lawyer

Telephone
605-842-2601

409 Main Street • P.O. Box 1766
Winner, SD 57580

February 20, 1990

RE: Ethics Opinion 90-3

Dear

You have related a factual situation through the State Bar Association. Your letter has been referred to the undersigned for the Ethics Committee, among others. The facts as considered by the Committee and its advisory opinion is as follows:

FACTS

You were contacted by a representative of "Attorney Hotline", a California based firm. "Attorney Hotline" plans to advertise on KELO television from February 19 through March 16, 1990. A total of 40 commercials would be aired with an 800 number listed. All calls received would then be referred to the attorney who purchased exclusive rights to the calls for the purchase price of \$2,590. At the end of the four weeks, the purchasing attorney has the exclusive right of first refusal to continuing purchase of the commercials.

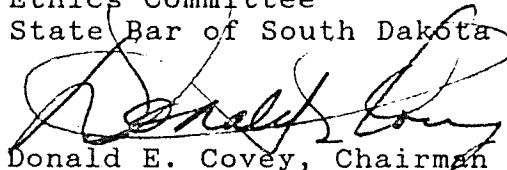
OPINION

Based upon the above facts, it is the opinion of the Committee that without inclusion of the name of at least one South Dakota lawyer who is responsible for the content, it violates Rule 7.2. Further, the advertisement must be retained for at least two years.

It further appears that this is a prohibited, for profit referral service in violation of Rule 7.2(c). In the interest of brevity and credit, I attach a copy of the opinion as submitted by Committee Member Michael S. McKnight. Mr. McKnight's opinion sets forth a summary of opinions in four other states where similar proposals have been addressed.

It is the opinion of the Committee that the practice is prohibited by the Rules of Professional Conduct in South Dakota.

Respectfully submitted,
Ethics Committee
State Bar of South Dakota



Donald E. Covey, Chairman

CAUTION:

State Bar Headquarters has learned that there are several companies which are contemplating the operation of referral systems whereby the company purchases large blocks of television advertisements, lists a toll-free phone number to receive calls from perspective clients, and then provides the names, addresses and telephone numbers of such perspective clients to those attorneys who have paid the fees to the company. This type of lawyer referral program appears to violate rule 7.2 (found at page 78 in the June, 1989, Supplemental newsletter) and we have requested an official opinion from the State Bar Ethics Committee. Prior to expending monies to purchase the services of these companies, South Dakota lawyers should carefully review the applicable rules of professional conduct. Opinions issued by the Ethics Committee are generally rendered to assist attorneys in the interpretation of the rules of professional conduct when an attorney is considering a prospective course of action. However, the lack of a specific ethics committee opinion is no defense to a disciplinary complaint.