

AO 1982-3/18

NEW HAMPSHIRE BAR ASSOCIATION  
Ethics Committee Advisory Opinion  
Lawyer Referral Service Referrals for Second Opinions

April 12, 1983

ADVISORY OPINION

ETHICS COMMITTEE ADVISORY OPINION: #1982-3/18  
March 18, 1982

Reviewed by Board of Governors April 21, 1983

QUESTIONS:

The Lawyer Referral Committee (LRC) of the New Hampshire Bar Association has requested an opinion with respect to the proper procedure to be followed by the Lawyer Referral and Information Service (LRIS) when it receives a request for referral to an attorney for a second opinion by an individual who is already represented by an attorney. The Committee has specifically asked:

1. Are there any ethical constraints which would preclude LRIS from referring a caller to a panel attorney for a "second opinion" on a matter as to which the caller is already represented by an attorney?
2. If such referrals are not absolutely precluded, under what circumstances and conditions may they be made? For example, would it be appropriate when making such a referral to require that the attorney accepting the referral be informed that the client already has an attorney in the matter and that the referral attorney cannot accept employment in the matter consistent with EC 2-30 unless the original counsel approves, withdraws, or has been terminated by the client?
3. Are the considerations any different in a situation where the first attorney accepting employment on the particular matter has been employed as a result of a referral from LRIS?

RESPONSE:

1. The Code of Professional Responsibility recognizes and encourages the development of lawyer referral systems "...designed to aid individuals who are able to pay fees but need assistance in locating lawyers competent to handle their particular problems". EC 2-15. There is no question, however, that attorneys who administer such a referral system and attorneys to whom clients have been referred pursuant to such systems are bound by the same ethical considerations which exist independent of such referrals. Your attention is directed to EC 2-30, which provides in part as follows:

“If a lawyer knows a client has previously obtained counsel, he should not accept employment in the matter unless the other counsel approves or withdraws, or the client terminates the prior employment.”

LRIS serves as an intermediary to assist members of the public to engage the services of competent counsel. LRIS does not represent any client.

The conduct which EC 2-30 is intended to discourage is that where an attorney accepts employment in a case or on a matter in which another attorney is already actively representing the client. In the situation where a client seeks a second opinion, however, the services for which the second attorney is being employed are the giving of an opinion on the facts of the case and/or on the advice and services already rendered by the first attorney.

In light of the above, it is our opinion that there are no ethical considerations which would preclude LRIS from referring a caller to a panel attorney for a “second opinion” with respect to a matter as to which the caller is already represented by an attorney. The answer would be the same if the client was referred to the first attorney by LRIS as well. Any attorney who knows that his client has previously been represented by other counsel has a duty to verify that the client’s employment of the former attorney has been terminated prior to undertaking any representation of the client beyond the mere rendering of the second opinion. See ABA Formal Opinion 209 (1940); ABA Formal Opinion 150 (1936); EC 2-30.