

## LEGAL ETHICS INQUIRY 90-3

### LAWYER REFERRAL/ADVERTISING PROGRAMS

Numerous lawyers have asked the Committee on Legal Ethics about the ethical propriety of belonging to the Personal Injury Trial Lawyers' Association ("PITLA").<sup>1</sup> PITLA is a nonprofit organization managed by a for-profit company called Promark. PITLA sells "slots" to attorneys in certain geographic regions. It is the understanding of the Committee that PITLA is selling 15 slots in West Virginia. An attorney or firm may buy more than one slot. The attorney is charged a monthly advertising fee and a monthly administrative charge per slot. There are also certain one time charges.

PITLA produces and runs television advertisements geared towards potential personal injury plaintiffs. A toll-free number is listed. When someone calls, he/she is screened by PITLA employees to determine if the caller has a compensable injury, if the tortfeasor is insured and if the caller is unrepresented. If the caller meets these criteria, he/she is given the name of an attorney or firm in the appropriate geographic location. The referrals are made on a slot rotation basis. Thus, an attorney with several slots will be referred more often than an attorney with only one.

As PITLA is currently structured, an attorney cannot participate in its program without violating the Rules of Professional Conduct. It functions as a referral agency, as acknowledged in its promotional material. Rules 7.2(c) states:

A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may

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<sup>1</sup> PITLA is not to be confused with voluntary legal associations such as the West Virginia Trial Lawyers Association, the American Trial Lawyers Association or the Defense Trial Counsel of West Virginia.

pay the reasonable costs of advertisements or communications permitted by this rule and may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.

Although PITLA is technically a nonprofit organization, its purpose is to generate income for Promark and the lawyer members. A genuine nonprofit referral service, as contemplated by the Rules, has a primary purpose of serving the public.

PITLA is not simply an advertising cooperative for attorneys, because it screens calls, rather than merely providing the name of an appropriately located attorney to all callers. Indeed, the program's advertising boasts of the "quality" of the screened referrals. It was this feature that caused the Cleveland Bar Association Professional Ethics Committee to reach the same conclusion; that a program identical to PITLA violates Ohio's Code of Professional Responsibility. Opinion 90-2, 5/23/90.

Moreover, PITLA's advertising program does not comply with Rule 7.2(d), which requires that any advertisement shall include the name of at least one lawyer responsible for its content. The Committee has interpreted this rule to require only the name of the law firm, rather than an individual attorney's name. But PITLA's advertising does not list the names of participating firms or attorneys.

The Committee is not insensitive to the needs of sole practitioners or smaller firms who concentrate on personal injury representation and must continually seek new clients. The Committee is also cognizant of the United States Supreme Court's recent holding in Peel v. Attorney Registration and Disciplinary Commission of Illinois, that a State may not

place an absolute prohibition on potentially misleading legal advertising if the information may also be presented in a way that is not deceptive. To avoid deceptiveness, the State may require an attorney provide additional information in an advertisement.

Although a for-profit lawyer referral service is impermissible, an advertising service which provides the names of attorneys on a slot rotation basis is permissible under the following conditions:

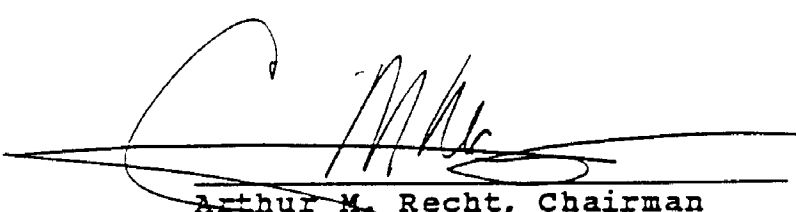
1. Advertisements which will be aired or read in West Virginia must contain the names of the participating West Virginia attorneys or firms.

2. The personnel who provide callers with the names of attorneys do not screen the calls in any manner.

3. Advertisements must contain the following disclaimer: "Advertisement Paid for by Sponsoring Attorneys. Not a Lawyer Referral Service."

4. The personnel who provide the names of attorneys must inform the callers that the named attorney has paid for the advertisement, and the personnel do not endorse the attorney.

Dated: *October 23, 1990*



Arthur M. Recht, Chairman  
Committee on Legal Ethics