

NEW TECHNOLOGY RAISES OLD ETHICAL PROBLEMS

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Technology is wonderful. But it does not eliminate your obligations under the rules. A new web site, www.crashfacts.com <<http://www.crashfacts.com>>, proclaims its ability to assist lawyers to "ambulance chase online" by connecting personal injury victims and personal injury lawyers. The Director's Office has received a number of complaints from concerned lawyers regarding this site, which promises personal injury attorneys a "Personal Injury PIPELINE" [emphasis in original]. On its face, there is no attorney associated with the web site.

Generally, the site promises to pay \$300 to personal injury victims if they agree to release personal information and consent to a videotaped interview.^{Ftn 1} The site then indicates that the videotapes may be made available to personal injury attorneys--for a fee. Attorneys can take advantage of this "pipeline" of personal injury cases for an initial sign-up fee of \$1,000 and an additional \$3,000 for each batch of videotaped interviews.

Can a lawyer seeking personal injury clients take advantage of this service? Probably not. While the technology behind it and the web site itself may be new, the ethical problems presented are not. First, a lawyer may not ethically pay for referrals. Rule 7.2(c), Minnesota Rules of Professional Conduct (MRPC), provides that:

A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or written communication permitted by this Rule and may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization, and may pay for a law practice that is sold in accordance with Rule 1.17.

Moreover, the Comment to the Rule specifically provides that a lawyer is allowed to pay for advertising permitted by the Rule, but otherwise is not permitted to pay another person for channeling professional work. Given the language of the Rule itself and the Comment, it appears that a lawyer who agreed to the terms proposed by the web site would clearly be paying for the referral of clients, violating Rule 7.2(c), MRPC. Rule 1.8(e), MRPC, also comes into play. A review of its plain language indicates that Rule 1.8(e), MRPC, prohibits the type of conduct proposed in the service mentioned above. The Rule provides that:

A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

- (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter;
- (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and

(3) a lawyer may guarantee a loan reasonably needed to enable the client to withstand delay in litigation that would otherwise put substantial pressure on the client to settle a case because of financial hardship rather than on the merits, provided the client remains ultimately liable for repayment of the loan without regard to the outcome of the litigation and, further provided, that no promise of such financial assistance was made to the client by the lawyer, or by another in the lawyer's behalf, prior to the employment of that lawyer by that client.

Finally, personal injury lawyers interested in the web site should know that they may be held ethically responsible for the advance payment of money to their potential personal injury clients under both Rule 1.8(e), MRPC, and under Rule 5.3(c), MRPC.

The fact that the web site rather than the lawyer actually pays the victims money for their personal information and a videotaped interview does not insulate the lawyer from a violation of the Rules. Rule 5.3(c), MRPC, provides that, with respect to a nonlawyer employed or retained by or associated with a lawyer:

A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

- (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
- (2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

In short, because a lawyer may not engage in the conduct described above, the lawyer may not avoid a violation of the Rules by allowing another person to engage in the same conduct and later ratify and benefit from the conduct. Lawyers may not ambulance chase online any more than they may by car or on foot. Rules 7.2(c), 1.8(e), and 5.3(c), MRPC, prohibit lawyers from entering into arrangements such as the one proposed. While the Director's Office has received a number of complaints regarding the existence of the web site, it is encouraging to note that it has not received information showing that Minnesota lawyers are signing up for the service.

¹ The money is promised so long as certain criteria are met, including the fact that the accident is not the victim's fault, the victim has a "valid" medical claim, the victim has no attorney, and the victim gives the web site organizers the right to record and distribute their personal information to personal injury lawyers.