

Matchmaking services for lawyers

Matching consumers with legal needs to lawyers who can meet those needs is certainly a worthy endeavor. Because there is no shortage of lawyers looking for work—and, according to numerous studies, a large number of people who cannot find qualified lawyers they can afford—entrepreneurs see this as a prime business opportunity.

Text a Lawyer

I recently learned of a new service, Text a Lawyer, that launched in July in Oregon and Washington.¹ Like Uber, the service uses two mobile apps: one for consumers to submit legal questions, and another for lawyers who are waiting in a pool to answer those questions. For \$20, consumers are matched with a lawyer. The app allows consumers to pose their questions, input names to facilitate a conflicts search, and accept the attorney's (required) limited-scope retainer agreement. The app then refers the question to the highest-rated lawyer



SUSAN HUMISTON is the director of the Office of Lawyers Professional Responsibility and Client Securities Board. She has more than 20 years of litigation experience, as well as a strong ethics and compliance background. Prior to her appointment, Susan worked in-house at a publicly traded company, and in private practice as a litigation attorney.

who is currently online and practicing in the state and legal category specified, with only a limited time frame for acceptance. If accepted, the lawyer and consumer are then connected in a secure "chat box" where follow-up questions can be asked by the lawyer, and a final answer provided. At the end of the transaction, the consumer's credit card is charged, with \$15 going to the lawyer and \$5 to the service provider (\$4 for a connection fee, \$1 for a software

licensing fee). For a limited period of time, follow-up questions can be answered for \$9 each (\$8 to the lawyer and \$1 to the service). The lawyer receives a transcript of the exchange, and the consumer can request one as well. My favorite part of this service is that the lawyer swipes the "Final Answer" button on the app to complete the service—and who doesn't want to declare, "That is my final answer!"

But what about ethics? There are several ethical issues involved in participating in for-profit referral or matchmaking services. Avvo has run into this problem in several states with its fixed price legal services plan. Under that plan, Avvo allowed consumers to pay a set price for a particular service, such as an estate plan, and provided the consumer with several local attorneys with Avvo ratings to use for that service. A portion of the fee would go to the lawyer, a portion to Avvo. But Internet Brands, the company that purchased Avvo several months ago, announced that it planned to discontinue this service at the end of July 2018. No reason was offered for this decision beyond this generic pronouncement: "As a part of our acquisition of Avvo, we have evaluated the Avvo product offerings, and adjusted the Avvo product roadmap to align more comprehensively with our business and focus."² It was a good decision, as numerous states had correctly found that the Avvo fixed-fee service violated several ethics rules. What are the rules in Minnesota regarding the use of referral or matchmaking services?

Minnesota's ethics rules

Let's start with the advertising ethics rules. Rule 7.2(b) states that "A lawyer shall not give anything of value to a person for recommending the lawyer's services" except under specific enumerated exceptions.³ One such exception is for the "usual charges of a legal service plan or a not-for-profit lawyer referral service." Lawyers may ethically pay the "usual charges" of a lawyer referral service, but the exception is specific to not-for-profit organizations, thus expressly exclud-

ing for-profit referral or matchmaking services. Accordingly, in Minnesota, an attorney can pay the "usual charges" to participate in nonprofit referral services such as those run by a bar association or other nonprofit—but no others.

Interestingly, ABA Model Rule 7.2 contemplates a lawyer referral service that is run by someone other than a nonprofit by including the phrase "a not-for-profit or qualified legal referral service,"⁴ adding that "[a] qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority." Minnesota did not adopt this version of the model rule, nor did lots of other states. The comments to Rule 7.2 also specifically discuss "lead generating services." The comments state that a lawyer may not pay a "lead generator" that "states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral."⁵ So remember, you can only pay for referrals if the referral service that you are paying is run by a nonprofit, and you can only pay its "usual charges."

Additionally, the ethics rules governing law firms and associations also impact referral and matchmaking services. Specifically, Rule 5.4(a) prohibits a lawyer or law firm from sharing fees with a nonlawyer.⁶ This latter rule is perhaps the larger hurdle for referral or matchmaking services because as you can see from the Text a Lawyer and Avvo business models, most such for-profit referral or matching services want a portion of the fee the consumer pays to the lawyer as compensation for making the connection. No matter how creatively businesses try to describe this charge, it looks and feels like prohibited fee-sharing with a nonlawyer. Because you generally cannot give anything of value for referrals (with limited exceptions), and cannot share fees with a nonlawyer, it is currently impossible to use for-profit referral services ethically in Minnesota, as well as in numerous other states.

The rationale behind these rules is twofold. Limiting permissible referral services to not-for-profit organizations, according to the comment, helps to ensure that the referral service is consumer-focused and provides unbiased referrals to lawyers of appropriate experience under circumstances in which other client protection measures—such as malpractice insurance requirements and complaint procedures—are also in place.⁷ Prohibiting fee-sharing with nonlawyers works to ensure the professional independence of the attorney, as stated in the very title of Rule 5.4. If you are sharing fees with a nonlawyer, the argument goes, considerations other than the best interest of the client may materially affect the delivery of legal services. This line of reasoning, and the extent to which it is advanced by the rules, is certainly subject to debate.

In fact, that debate is currently being waged in a few jurisdictions. For example, the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois just published an extensive study on this topic, and is requesting comment on its proposal to allow for-profit referral services as long

as those services are registered with and regulated by the Illinois Supreme Court.⁸ The impetus for this proposed rule change is primarily the belief that such a change may help to close the access to justice gap that has grown so prevalent, while still protecting legal consumers and the integrity of the legal profession—two guiding principles of lawyer regulation. The Association of Professional Responsibility Lawyers (APRL), a group of lawyers who, among other things, advise other lawyers and law firms on professional ethics issues, has also formed a task force with several subcommittees to study the issue of fee-sharing and related rules.

This topic is of interest to me, and I welcome your thoughts on whether Minnesota should review this issue, and if so, what you would like to see done. While I have your attention, I would like to cover one final point on a related but separate topic: finder's or referral fees between lawyers. The only way to ethically share legal fees with another lawyer not in the same firm is if you comply with the requirements of Rule 1.5(e), MRPC. Please make sure you review and comply with this rule if you are

fee-sharing. Also, the prohibition against providing something of value for referrals applies to other lawyers as well, with only one exception (found in Rule 7.2(b)(4), MRPC). If you have a referral arrangement in place with another lawyer, please revisit these rules, or call the ethics hotline at 651-296-3952 for advice. ▲

Notes

¹ Robert Ambrogi, "Launching Soon: 'Text a Lawyer' Aims to be the Uber of Legal Help," LawSites (6/20/2018), www.lawsitesblog.com.

² Jason Tashea, "Avvo's Fixed-Cost Service to be Discontinued by Internet Brands," ABA Journal (7/6/2018).

³ Rule 7.2(b), Minnesota Rules of Professional Conduct (MRPC).

⁴ ABA Model Rule 7.2(b)(2).

⁵ Comment [5], Rule 7.2, MRPC.

⁶ Rule 5.4(a), MRPC. There are a few exceptions to this broad prohibition but none for referral or matchmaking services.

⁷ Comment [6], Rule 7.2, MRPC.

⁸ *Client-Lawyer Matching Services: Study of the Attorney Regulation and Disciplinary Commission of the Supreme Court of Illinois*, Released for Comments on 5/30/2018, version 2 released on 6/25/2018, at http://illinoiscourts.gov/Media/enews/2018/052518_ARDC.