

MSBA Ethics Docket 2004-23

FINAL

You are a Maryland attorney who primarily practices in the area of divorce and family law. You inquire about the propriety of a “collaborative dispute resolution non-profit organization” and whether such an organization complies with the Maryland Lawyers’ Rules of Professional Conduct.

The facts presented are that a group of local attorneys who practice primarily in the area of divorce and family law wish to form a collaborative organization with local mental health professionals and investment advisers (the “Organization”). These professionals are serving the public in family matters and wish to promote the goal of collaborative dispute resolution of separation and divorce issues. The intent of the Organization, as a non-profit corporation, will be to engage in community outreach activities meant to inform and educate other professionals, religious organizations, and the public at large about this new method of dispute resolution.

The Organization will promote its goals through the sending of materials that identify the particular professionals who are members of the Organization. Potential clients will contact the professionals directly and there will be no contact with the Organization. You advise that the practice of law by the Organization is strictly prohibited and that any work or income generated by the professionals will not be income to the Organization. You further advise that members of the Organization will not hold each other out as partners and no member will receive any income from the Organization.

Your specific inquiry to the Maryland State Bar Ethics Committee is “whether a collaborative dispute resolution non-profit organization complies with our Code of Ethics, to wit, having lawyers, mental health care professionals and other disciplines participate in such an organization as more fully described below.” We have discussed this inquiry at several ethics meetings and, quite frankly, find it difficult to respond conclusively to your inquiry without having a more complete idea of all aspects of the organization’s and its members’ activities. We certainly believe that it is entirely consistent with the Rules of Professional Conduct for lawyers to participate in non-profit organizations whose purpose is to educate the public, including educating them on new methods of dispute resolution that, in your words, elevate the integrity, honor and courtesy of the divorce process. Some of the members of this Ethics Committee are familiar with collaborative law and believe that it does serve laudable purposes for those involved in trying domestic circumstances.

Hence, as an organization, we wholeheartedly encourage the activities by members of the Bar to educate the public and promote the legal profession. Indeed, under the new aspirational pro bono requirements, our ethics rules acknowledge the pro bono nature of hours “devoted to activities for improving the law, the legal system or the legal profession”. Maryland Rules of Professional Conduct 6.1(b)(2). See *also* Ethics

Docket 86-48.

Having conveyed our sentiment that there certainly is nothing improper with members of the Bar being involved in an organization such as the one you described, whose purpose is educational, the difficulty we have is distinguishing what we would characterize to be the “marketing activities” of your organization from other opinions we have previously authored in analogous circumstances. From the facts you have provided, and without knowing more about the substance of your organization’s promotional material, we are concerned that the organization’s promotional activities could be deemed to be a type of lawyer referral service in so far as lawyers attract business from clients through such promotional activities. Although the organization may not directly “match up” interested potential clients with its participating attorneys, the maintenance of a list of participating members whom clients will contact seems akin to a lawyer referral service. Moreover, if the organization itself is involved in the referral of clients to its members, that would exacerbate the likelihood of it being viewed as a lawyer referral service.

In that regard, you may want to examine Ethics Docket 94-11, involving a referral service to be operated by a group of lawyers for referring cases among themselves in which this Committee concluded that while such activity may not be prohibited per se by the Maryland Rules of Professional Conduct, there are significant concerns about it under Rules 7.1 and 7.2 of the Maryland Rules of Professional Conduct. The lawyers involved in your organization, in our view, should examine that opinion and the requirements of Rules 7.1 through 7.5, which limit the rights of lawyers in regard to advertising and ensure that your organization’s activities do not run afoul of those Rules.

This Committee also has examined on several occasions the question of the propriety of lawyers engaging in business with or receiving referrals from non-lawyers. The lawyers involved in your organization should review carefully the cautions we have expressed in several of our opinions and specifically Ethics Docket Nos. 00-34; 00-35; 00-40 and 96-17. We have also expressed concerns about lawyers using an organizational structure improperly as a means of feeding their law practice. See Ethics Docket 01-17.

On a positive note, to the extent that your organization may be deemed a lawyer referral service, it may well fall within in the safe harbor provided in Rule 7.2(c) of the Maryland Rules of Professional Conduct in that participating lawyers of your organization, we understand, are only paying dues to cover the actual cost of the organization’s operation.

As a Committee, we understand that you might construe the foregoing to convey a mixed message.. Perhaps such a response is inevitable because we do not have before us all of the facts about the activities of your organization and can only provide guidance based upon the limited facts before us. As a word of caution, the closer you stay to the fundamental educational purpose, the more likely the activities of the

organization will be deemed to be in compliance with the Rules of Professional Conduct. The closer the lawyers in the organization come to participation in an organization which is truly a marketing entity, the more likely issues of concern arise under the Rules of Professional Conduct.

On a final note, you have not asked for the guidance of this Committee as to any concerns that might arise relating substantively to the practice of collaborative law and, as a consequence, we express no opinion in that regard. We do draw your attention, however, to an opinion of our sister Committee in North Carolina. See Nat'l Rep. on Legal Ethics & Prof Resp., N.C. 2002 Formal Ethics Opinion 1 (April 19, 2002).

We hope the foregoing comments are of assistance to you and your organization in formulating your activities.