

## **ETHICS ADVISORY OPINION**

**13-09**

UPON THE REQUEST OF A MEMBER OF THE SOUTH CAROLINA BAR, THE ETHICS ADVISORY COMMITTEE HAS RENDERED THIS OPINION ON THE ETHICAL PROPRIETY OF THE INQUIRER’S CONTEMPLATED CONDUCT. THIS COMMITTEE HAS NO DISCIPLINARY AUTHORITY. LAWYER DISCIPLINE IS ADMINISTERED SOLELY BY THE SOUTH CAROLINA SUPREME COURT THROUGH ITS COMMISSION ON LAWYER CONDUCT.

### **Factual Background:**

Law Firm has been approached by Real Estate Agency about becoming a sponsor in order to be listed as one of three attorneys on Real Estate Agency’s Preferred Closing Attorney list. In order to become a Preferred Closing Attorney with Real Estate Agency, Law Firm must enter in to an “advertising agreement.” The requirements of the agreement include:

- Law Firm will pay \$350 per month to Real Estate Agency
- Business cards, tri-fold pamphlet and signage, all provided by Law Firm, will be displayed at Real Estate Agency’s office
- Law Firm may attend team meetings and company events held by Real Estate Agency
- Law Firm may attend all training functions
- Law Firm may provide presentations to agents concerning topics in real estate law
- Real Estate Agency will provide Law Firm an introduction to all new agents as part of such agents’ orientation

May lawyer ethically participate in the above-described scenario?

### **Summary:**

The lawyer may not pay for Preferred Closing Attorney status, where such status entails being listed as a Preferred Closing Attorney, the right to place advertising materials in the Real Estate Agency’s office, and the right to participate in Real Estate Agency meetings and training sessions.

**Opinion:**

Rule 7.2(c) of the SCRPC forbids a lawyer to “give anything of value to a person for recommending the lawyer’s services. . . .” The core purpose of the rule is to prevent lawyers from competing for business by paying for referrals. *Id.*, Cmt 7 (“Lawyers are not permitted to pay others for channeling professional work.”). For purposes of this opinion, we consider “person” to include corporations and other legal entities.

We recently concluded in EAC Opinion 13-03 that the limitation of Rule 7.2(c) does not prohibit a transaction in which a lawyer pays a “commercially reasonable” price to a third party for a good or service, even when the third party demands the transaction as a prerequisite to listing the lawyer as one of its “preferred attorneys.” In other words, it is permissible for lawyers to enter into transactions with third parties that are intended to result in referrals, provided such transactions are on “commercially reasonable” terms – terms that would justify such transactions irrespective of the referrals.

The specific context of our opinion in EAC Opinion 13-03 was a landlord-tenant relationship in which a real estate agency would treat a lawyer as a “preferred attorney” in exchange for the lawyer’s agreement to lease office space from the agency. Provided the lease terms were commercially reasonable, we opined, the lawyer was free to enjoy the referral stream that accompanied “preferred attorney” status.

The present scenario is distinct from that in EAC Opinion 13-03. Here, all the advantages the lawyer would enjoy as part of Preferred Closing Attorney status – placement on the Preferred Closing Attorney list, the right to place advertising in the Agency office, access to Agency employees at meetings and training functions – are designed to generate referrals. There is no distinct non-referral consideration flowing from the Real Estate Agency to the lawyer. While the inquirer in EAC Opinion 13-03 was paying for something of independent value (office space), the inquirer here would be paying for access to a source of referrals, and nothing more.

We note that although Rule 7.2(c)(1) permits a lawyer to “pay the reasonable costs of advertisements,” the proposed Preferred Closing Attorney status is not a matter of advertising but of the Agency’s endorsement and willingness to provide privileged access to a referral source. Thus, the contemplated arrangement cannot reasonably be characterized as payment for advertising.

We advise against proceeding with the arrangement described above, and expressly reject the view that EAC Opinion 13-03 would permit it.