

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: PETITION TO ADOPT PROPOSED SUPREME COURT RULE 44

No. M2003-00394-SC-RLI-RL

ORDER

In accordance with this Court's inherent power to establish ethical standards relating to the practice of law and to oversee the administration of law in the courts of this state, Rule 44 of the Rules of the Supreme Court is hereby adopted:

Rule 44 - Regulation of Lawyer Intermediary Organizations

This Rule shall govern intermediary organizations as defined in RPC 7.6(a). An intermediary organization is a lawyer advertising cooperative, lawyer referral service, prepaid legal service provider, or similar organization the business or activities of which include the referral of its customers, members, or beneficiaries to lawyers for the performance of feegenerating legal services or the payment for or provisions of legal services to the organization's customers, members, or beneficiaries in matters for which the organization does not bear ultimate responsibility. A tribunal appointing or assigning lawyers to represent parties before the tribunal or a government agency performing such functions on behalf of a tribunal is not an intermediary organization under this Rule.

A. Registration and Reporting Requirements

- (1) Each intermediary organization shall file an initial registration statement and annual registration statements with the Board of Professional Responsibility, each of which shall be certified by an officer or authorized representative of the organization.
- (2) The initial registration statement shall set forth or be accompanied by the following:
 - (a) A copy of the organization's basic organizational document, including the articles of incorporation, articles of association, articles of organization, operating agreement, partnership agreement, trust agreement, or other organizational document and all amendments, addenda, or exhibits to any such document.
 - (b) A copy of all bylaws, operating agreements, rules, regulations, or similar documents, if

any, regulating the conduct of the organization's internal affairs.

(c) A list of the names, addresses, and official positions of, and biographical information concerning, any individuals who are responsible for conducting the organization's affairs.

(d) A list of the names, addresses, and official positions of, and biographical information concerning, any shareholder or beneficial owner of an ownership interest in the organization of 5% or greater.

(e) A list of the names, addresses, and Board of Professional Responsibility disciplinary numbers of all lawyers participating in the organization and providing legal services for Tennessee residents.

(f) A specimen copy of the form of all contracts made or to be made between the organization and any participating lawyers.

(g) A specimen copy of the form of any contract made or to be made between the organization and any person, corporation, partnership, or other entity for the performance on the organization's behalf of any function, including, but not limited to, marketing, administration, enrollment, investment management, and subcontracting for the provision of legal services.

(h) A specimen copy of the form of any group or prepaid legal services contract that is to be issued to employers, unions, trustees, individuals, or other organizations and a specimen copy of any form of evidence of coverage to be issued to subscribers.

(i) A schedule of rates and charges for each contract to be used.

(j) A description of any proposed marketing efforts.

(k) A description of the organization's grievance or complaint procedure for its customers, members, or beneficiaries.

(l) As to prepaid legal insurance providers, a copy of a Certificate of Authority to sell legal insurance issued by the Commissioner of the Tennessee Department of Commerce and Insurance.

(m) A copy of the organization's most recent financial statements audited by an independent certified public accountant.

(3) The annual registration statements shall set forth or be accompanied by the following:

(a) A copy of the organization's most recent financial statements audited by an independent certified public accountant.

(b) A narrative description of any material changes that may have occurred since the organization's last filing with the Board, including updated or current copies of any information or documents previously filed with the Board of Professional Responsibility that have materially changed.

(4) The following organizations are exempt from filing initial or annual registration statements with the Board:

(a) Legal aid or public defender offices:

(i) operated or sponsored by a duly accredited or approved law school;
or

(ii) operated or sponsored by a governmental agency;

(b) A military legal assistance office;

(c) A lawyer referral or legal aid service operated by the Chattanooga Bar Association, Knoxville Bar Association, Memphis Bar Association, Nashville Bar Association, Tennessee Bar Association, or Tennessee Trial Lawyers Association.

B. Compliance

An intermediary organization complies with this Rule if it registered as provided in Section F and has complied with the requirements of Sections A, C, D, and all of the following additional requirements:

(1) The organization shall not be owned or controlled by any participating lawyer, a law firm with which a participating lawyer is associated, or a lawyer with whom a participating lawyer is associated in a firm.

(2) The customer, member, or beneficiary of the organization, and not the organization, shall be the client of the participating lawyer.

(3) The organization shall assert no improper influence upon, nor shall it infringe upon, the attorney-client relationship or the independent professional judgment of the participating lawyer.

(4) The organization shall not limit the objectives of the representation to be provided by participating lawyers to its customers, members, or beneficiaries, or the means to be used to accomplish those objectives, if such a limitation would materially impair the lawyer's ability to provide the client with the quality of representation that would be provided to a client who had not been referred to the lawyer by the organization.

(5) The organization shall not request or require that a participating lawyer reveal information that is privileged or protected by RPC 1.6.

(6) The organization shall not request or require that a participating lawyer take any action prohibited by, or fail to take any action required by, the Tennessee Rules of Professional Conduct.

(7) Customers, members, or beneficiaries of the organization shall be informed that they may file a complaint of unethical conduct by a participating lawyer with the Board of Professional Responsibility, and informed of the method by which they may do so.

(8) Any organization that is a prepaid legal insurance provider shall comply with Tennessee Code Annotated, Title 56, Chapter 43, known as the Tennessee Legal Insurance Act.

(9) The organization shall permit the participation of not less than four (4) lawyers licensed to practice in Tennessee, not associated with each other in a firm, and each of whom maintains an office in the geographical area served by the organization; provided, however, that the organization may require such participating lawyers to:

(a) meet reasonable and objectively determinable standards of competence and experience; and

(b) pay a reasonable participation fee in conformance with RPC 5.4(a).

(10) The organization shall not condition referral of its customers, members, or beneficiaries to participating lawyers upon a preliminary determination by the organization that the client's claims or defenses have merit or economic value; however, the organization may perform call screening as necessary to determine the applicability and availability of appropriate non-legal services.

(11) The organization shall utilize reasonable procedures to assure that participating lawyers are properly licensed and competent to handle the matters referred to them.

(12) The organization shall utilize reasonable procedures to provide substitute counsel in the event that a lawyer to whom a matter is referred cannot undertake or continue the representation in compliance with the Rules of Professional Conduct or this Rule.

(13) If the organization is a not-for-profit lawyer referral service, it may charge a fee calculated as a percentage of legal fees in compliance with RPC 5.4(a)(6).

(14) The organization shall establish and implement a reasonable grievance or complaint procedure for the resolution of complaints or grievances by customers, members, or beneficiaries who are dissatisfied with the services or fees provided by the organization or its participating lawyers.

(15) An organization shall apprise itself of any public disciplinary history of any participating lawyer and shall, when appropriate, review the files of the Board of Professional Responsibility concerning any such public discipline imposed on any participating lawyer before allowing that lawyer to participate in providing services.

C. Advertising and Marketing Requirements

An intermediary organization shall not:

- (1) Make a statement about its services, its participating lawyers, or the services they will or may provide, that would violate RPC 7.1 if made by a lawyer.
- (2) An intermediary organization shall not identify any of its participating lawyers as specialists, as specializing in, or as certified or recognized as a specialist in a particular field of law unless all participating lawyers are certified as specialists in the identified field of law by the Tennessee Commission on Continuing Legal Education and Specialization.
- (3) If a significant motive for the solicitation is the pecuniary gain of the organization or its participating lawyers,
 - (a) Solicit employment for its participating lawyers in specific matters by in person, live-telephone, or real-time electronic contact with a person who has not initiated the contact; or
 - (b) Solicit employment for its participating lawyers by a writing, recording, telegram, facsimile, computer transmission or other mode of communication directed to a specifically identified person who has not initiated the contact communication if a participating lawyer would be prohibited from doing so by RPC 7.3(b) or (c).

D. Qualification of Lawyers

An approved intermediary organization shall take reasonable steps to determine that all of its participating lawyers meet the following requirements:

- (1) That the lawyer is on active status and in good standing with the Board of Professional Responsibility and with the lawyer licensing authority in each jurisdiction in which the lawyer is licensed;
- (2) That the lawyer is in compliance with the CLE requirements of Rule 21;
- (3) That the lawyer agrees to permit the organization to release and furnish any information from the lawyer's application to the lawyer's clients or potential clients; and
- (4) That the lawyer agrees to participate in and abide by the organization's procedures concerning grievances or complaints by customers, members, or beneficiaries.

E. Other Requirements Imposed by Organization

Nothing in this Rule prohibits an organization registered under this Rule from imposing upon its

participating lawyers, and a registered organization may impose upon its participating lawyers, other lawful requirements as a condition of participation, including, for example, requirements that participating lawyers waive any confidentiality of disciplinary complaints or proceedings under Supreme Court Rule 9, Section 25, that participating lawyers agree to participate in the arbitration of disputes concerning their fees or services provided in connection with their participation in the organization, or that participating lawyers maintain professional liability insurance at certain levels. Further, accurate communications concerning any such requirements in any advertising by the organization do not violate any provision of this Rule. An organization may establish specific subject matter panels of participating lawyers, whose eligibility for such panels shall be determined on the basis of experience and other substantial objectively determinable criteria.

F. Registration

(1) If an organization complies in all material respects with this Rule, the Board of Professional Responsibility shall register the organization under this Rule. If an organization fails to comply in any material respect with this Rule, the Board shall deny registration to the organization. If an organization registered under this Rule is found to no longer be in compliance with the requirements of this Rule, the Board shall revoke the registration of the organization.

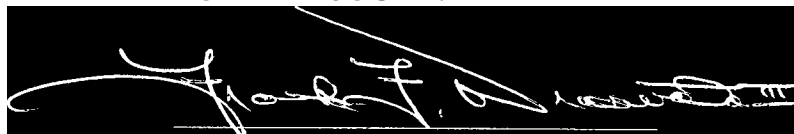
(2) All documents or information provided to the Board of Professional Responsibility by or on behalf of the organization shall be open for public inspection in the offices of the Board of Professional Responsibility during its regular business hours. The Board may charge a reasonable fee for copying any such documents or information.

G. Amendments to This Rule

Any interested person or organization may petition this Court to change this Rule.

The foregoing Supreme Court Rule 44 shall become effective on February 1, 2004.

FOR THE COURT:

A black rectangular box containing a white handwritten signature in cursive script, which appears to read "Frank F. Drowota, III".

FRANK F. DROWOTA, III
CHIEF JUSTICE