

Explanation of Proposed Amendments to Rule of Professional Conduct 7.2

The ARDC's proposal aims to expand the marketing tools available to lawyers and to clarify when and, to a certain extent, how a lawyer may participate in an intermediary connecting service. Proposed amendments to Rule 7.2 would add two new paragraphs: the first would address lawyer participation in intermediary connecting services, and the second would address a lawyer's payment to an intermediary connecting service for lawyer-client connections.

Under proposed Rule 7.2(b), a lawyer would not be permitted to participate in a service if the lawyer knows or should know the service does not maintain an active registration with the ARDC, if the service requests or requires the lawyer to violate the Rules of Professional Conduct, or if the lawyer's participation in the service or acceptance of a connection would violate the Rules. Accordingly, if an intermediary connecting service were to require a lawyer to make, or to refrain from making, certain decisions in a client matter, the lawyer would not be able to accept a connection or to participate in the service.

Further, proposed Rule 7.2(c)(3) would clearly define what, and when, the lawyer would be able to pay to a registered intermediary connecting service. Specifically, proposed Rule 7.2(c)(3) would allow a lawyer to pay a reasonable connecting fee for every connection that results in a potential client hiring the lawyer, provided certain enumerated conditions are met. Some of the conditions are designed to increase transparency of the lawyer's fee and value of the offered legal services, and to address the traditional concerns of fee-splitting and a third party's interference with the lawyer. Lawyers would have to disclose to the client their relationship with the intermediary connecting service, the basis or rate of the fees and expenses, and any connecting fee they have paid or are required to pay. Additionally, the connecting fee could not be calculated or expressed as a percentage of the lawyer's anticipated or actual legal fees.

Also, proposed Rule 7.2(c)(3) would prohibit the charges or fees of the intermediary connecting service and the lawyer from being contingent on the outcome of the matter. This proposed language acknowledges that contingent fees are already an effective access-to-the-legal-marketplace-tool. It also recognizes that in order for bar association referral services to continue operating their important services, a significant portion of their operating budget may come from the percentage fees they collect from participating lawyers who handle contingent fee matters referred to them.

One potential effect of prohibiting contingent fee matters would be that lawyers and intermediary connecting services may market or offer more limited scope services or fixed-fee legal services. The Illinois State Bar Association's Task Force on the Future of Legal Services has recognized that unbundled services satisfy consumer expectations and allow lawyers to provide high-value services to a broad market of legal consumers. Unbundled services may even foster more traditional representations and could have a positive impact on court efficiency.

Finally, the proposal would amend Comments [5], [6], and [7]. Proposed amendments to Comment [5] would reference the amended paragraphs in light of proposed paragraph (c). Proposed amendments to Comment [6] would state that a lawyer may pay the usual charges to a registered intermediary connecting service and that payment of a connecting fee pursuant to the

new Rule 7.2 does not constitute fee-splitting under Rule 5.4(a). Proposed amendments to Comment [7] would acknowledge that a registered intermediary connecting service and its participating lawyers are subject to Rule 5.3. Currently, that Comment only references lead generators, legal service plans, and referral services.