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Popular Threads on Solosez

Referrals

Hi all,

I have been asked to post this anonymously for a fellow 'sezer.

----- Original Message -----

I have a transactional practice and it is standard practice among my colleagues in my particular subspecialty to not pay a referral fee. I've always told referring attorneys that if I have a case which fits their skill set, I'd be pleased to return the favor.

Lately, I've been getting referrals from an attorney in a neighboring town, who doesn't practice in my particular specialty. The referrals have been good ones. However, I've seen this attorney's work product and think it's pretty atrocious. He thinks he knows more than he does, and he doesn't strike me as a good listener or a careful thinker. I think sending him a case would be an invitation to a malpractice action. In fact, one of his clients asked me what I thought of some work which he had done and I had seen. I had to bite my tongue and resist the urge to point out the inadequacies and errors.

So, what do I do here? Should I just turn down further referrals without an explanation, rather than be put in this position? Something else?

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Please remember, this is for someone else, please post to the list and not to me.

Frank J. Kautz, II

I would not refer anyone to that person and I think after a certain period of time passes without you referring clients to that person, that person may possibly stop referring clients to you. But you didn't promise that person clients so I think you may be ok just not referring anything without directly saying anything. For all that other person knows, you may not have gotten any good potential cases within that person's practice area or you might have referred someone who opted not to call that person.

Naomi C. Fujimoto

The poster said, "I've seen this attorney's work product and think it's pretty atrocious. He thinks he knows more than he does, and he doesn't strike me as a good listener or a careful thinker. I think sending him a case would be



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an invitation to a malpractice action."

I have sat down with more than a couple of local attorneys and told them essentially the same thing. Don't avoid it, especially if he is a good referral source. Take the person to lunch and tell them what you think. They sure won't hear it from anyone else. Worst case, IMO, is that you continue to get the referrals because he knows you speak truth plainly and constructively. He may even learn a thing or two. You don't have to be a jerk about pointing out his weaknesses as you perceive them, you simply have to be a friend and tell the truth. Have some tips on how to be better - don't make it all negative.

If he is offended, don't sweat it. Get your own clients and forget about the referrals.

Best regards,
Arthur B. Macomber

I'll bite. As always, you have three choices: you can accept the situation and do nothing, withdraw from the situation, or change the situation. In this case all three choices come to the same conclusion, you will likely see few referrals from the other attorney.

I think it would reflect poorly on you to refer to an attorney with whom you are not assured as to performance. And just leaving the situation alone will result in the spigot being cut off as the favor is not being returned. If you just decline to cross-refer then
With regard to that third choice, you should have a frank conversation with the attorney. You greatly appreciate his work, but you aren't comfortable making referrals until you are assured of the quality of the recipient's work. You can either discuss the work you know of or ask him for exemplars of his work. You can address the shortcomings in his exemplars or in the work you are aware of. There may be possible explanations for the work you have previously seen. you will lose out and you

In this worst case, he calls you a fussy budget and stops referring to you. It wouldn't behoove him to bad mouth you. Best bet for him is to take the information to heart and improve his work product. Or, you could offer to help him up his game.

Roger Traversa

I too have a transactional practice so I know what you mean about not paying referral fees. It's pretty rare. But you can freely accept referrals from this attorney without referring him cases in return. Until you have a case that calls for atrocious skills, you won't have a case that meets his skills set. If he gets tired of sending you cases without reciprocity, problem solved. But he may not get tired to sending them your way. He may be sending them your way because you have the skills needed to do work that he can't and he wants the best for his clients. I have referred a number of clients to litigators without any expectation of return referrals. I tried to match the client to the right lawyer. If a litigator sends a case my way, great. If not, fine by me. If he never gets tired of sending you cases

without return referrals, there never was a problem. I wouldn't sit down with any attorney to point out what crap his work is unless he specifically asked me to critique his work. And even then, I would think carefully about my response.

Richard Burt

I don't see how one can refer a case to someone who he/she considers incompetent. It will come back to haunt you. A unhappy client will show up on your doorstep. I certainly would not reject his referral though, since you are providing good legal service to someone who needs your skills.

You might send the referring attorney some tickets to a show or send a gift certificate for a great dinner on his birthday to show your appreciation of his friendship.

Cheryl R. Eisberg Moin

The key to this answer is in the second sentence of the question: "if I have a case which fits their skill set, I'd be pleased to return the favor." It sounds like you will NEVER have a case to fit this person's skill set, since you don't feel that person is very competent. Continue to accept the referrals from that person if they are good cases, and continue to not refer anything back. Even if you were paying referral fees, you have no obligation to send clients to an attorney who can't handle their work properly. If the attorney ever asks you why you haven't sent referrals his or her way, the honest answer is right there: "I've never come across a case that really matched your skill set."

Dineen Pashoukos Wasylik

Pay him back in a different way. Superbowl tickets or an Amex card for dinner at some nice restaurant. Make the value meet the value of the referrals he sends. I wouldn't tell him you wont be sending any cases, but I wouldn't send any.

Shell Bleiweiss

I would be so very, very careful about referring anyone to an attorney, even one you have a good opinion of.

I have had some personal legal issues and being a non-litigator, I found when I tried to represent myself it did not go so well. I could not determine why, it seemed bizarre how things were going so badly. I didn't have time to figure it out and do my own work.

On the recommendation of someone I know and like, I hired this person's referral. Supposedly a knowledgeable, experienced attorney. This recommended attorney was given the entire history including motions, evidence, etc. She assured she could and would advocate.

This attorney highly recommended by an acquaintance failed to file a list of witnesses or list of evidence and failed to do whatever other requirements were standard and the Judge dismissed my motion with prejudice! I had been waiting since October 2007, this was important to me, and I stood there and listened to the Judge lecture my attorney on the rules.

I know that this is not the fault of the person who made the recommendation. He likely had a good experience and was going on that. But obviously it is awkward at best.

Marylou Lavoie

Because of an experience I had in the not too distant past, I will only refer a colleague that I know personally to be the kind of attorney I would hire myself if in need. I had referred someone to a dear friend based on this attorney's "reputation" and the referral of another attorney whom I did not know personally, and honestly, I was mortified to the point of almost suggesting a malpractice claim.

You can never apologize enough when someone you know has been badly represented, overcharged, or received uncaring and uncommunicative counsel by someone you recommended to them.

I will never put myself or a client or friend in that position again, and the only way I know to do it is to refer attorneys I have worked with or know personally. I would not recommend someone whose skills or ethics I questioned in any way.

Diana Laskaris

I offer clients several options, and 9 out of 10 times they choose Starbucks or Panera. Older clients prefer more privacy, typically, so I'll reserve a conference room at the local library. Also, some smaller law firms will gladly rent their conference room. A couple of clients are referred from a CPA, so I'll meet them in the CPA's conference room.

Julie Mills

I am in favor of keeping the referral networks intact as much as possible. I think that critiquing his work may have a tendency to offend him if he is a know-it-all. If you refrain from criticizing him, he may continue to be a very good source of referrals for the foreseeable future.

It seems to me that your question indicates that you have an internal conflict burning inside you; you may feel guilty deriving benefit from the relationship if you are not returning the favor, almost a form of "unjust enrichment". However, by occasionally taking him to lunch, sending him a bottle of wine, whatever, in lieu of referrals, you may feel a bit better about taking referrals from him without sending him any.

Doug Harhai

I've heard this often enough that I don't do it. I have a list of about five attorneys, and I preface my list with, "I would be comfortable taking my own case to any of these attorneys." I give all their names and telephone numbers, and let the person call them and make up his/her own mind.

cj

I think you have an ethical issue if you refer a case to another attorney as a quid pro quo for referrals to you; especially when this other attorney may not be the most qualified or best prepared to do the work. If you don't know his beverage of choice, send him a gift card to a nice restaurant along with a HANDWRITTEN note thanking him/her for both the referral and the confidence he has in your work.

Peter Clark

There is nothing worse than making a bad referral. It will ALWAYS, REPEAT, ALWAYS come back to haunt you. When you make a referral, it is an implied endorsement of the quality of the person/firm to whom you are referring the work. For that reason, and others, you should in almost every case suggest two or three alternative lawyers or firms. Let the client interview as few or as many as they wish. But remember, if you refer a "clinker", it will come back to haunt you, if for no other reason than the client will forever link you and the other lawyer, and you will get a reputation for "being the guy who sent me to that idiot". Not a place you should choose to be.

Jeff Solomon

I refer cases out all the time, and I get a lot of referrals, but I neither accept nor pay referral fees. It is an interesting model--it works best in a small bar where the other attorneys know your mechanism before they decide to call you--and depending on your practice area, you may want to consider it. When I get a referral from a previously unknown attorney, my "rule" is always the first thing I say, before I accept; I also give them the politest possible chance to retract the referral. It has not hurt my practice at all.

Erik Hammarlund

I am asking this with all sincerity-

Is this something I missed? Do people pay for referrals for all types of cases? I was always under the impression that it was only really in PI cases that Attorney's paid a referral fee.

Am I all wrong here that the Attorney's sending me a case are annoyed if I do not send them a referral fee if the client retains me?

What is the standard practice?

Is there a standard percentage?

Do the rules allow paying referral fees?

When you give a gift to an attorney, is it only when you earn a certain amount from the fee? (ie over \$1000)

How do you all handle this?

Thanks,
Sean Sweeney

Good question.

If you are not paying referral fees, and I think they are over requested and overpaid, You must acknowledge the referral. I start with a card. If the referral was a top of the line referral, I will gift it with a hard to get VIP tix to a show or game, dinner and (this is the truth) a limo to pick them up and take them to the dinner and show.

If it is a good but not referral of the year referral, It's a nice Dinner for two, or a ticket (But not hard to get or even VIP).

Run of the mill referrals, get a bottle of Booze or a basket of fruit or abox of Lindt Chocolate truffles.

Now. If the referrer sends lots of cases and they run the gamut then I kind of aggregate the referrals and decide what to do.

Again Nothing is hard and fast. But acknowledge with a card or E-mail at the very least.

Tony Colleluori

Since referral fees are frowned upon by all states, and outright prohibited in most instances, isn't it a bit foolish to have this discussion on line?

Would you encourage your clients to discuss "gratuities" to win potential bids or contracts in emails?

Jeff Solomon

Frowned on and outright prohibited? Sometimes I wish that were the case, but it isn't. In MA, they have to be disclosed and the client has to assent but other than that, there is no prohibition.

Mitch Matorin

I have practiced in CT and CA and I was unaware that referral fees were "frowned on" let alone banned. There are certain requirements for accepting/sending referral fees, but I think it is a good system. For instance, for a case outside my experience/comfort level, I know of a few local guys I can send it to who are the best of the best. My client gets the

absolute best representation (I would hire these folks for my own issues) and I keep a reasonable amount of the fee.

Unofficial and unscientific poll - Am I the only one who has no problem with this? How many jurisdictions outlaw this practice? How many frown on it?

Andrew A. Magwood

I don't think that they are prohibited in PA--fellow Pennsylvanians, what say you?

Doug Harhai

Arizona does not permit referral fees. In order for a referring attorney to share in the overall fee, he must share responsibility for the case and the arrangement must be disclosed to the client.

Similarly, attorneys may not give or receive anything more than de minimis gifts in exchange for sending or receiving referrals.

Strict compliance with these requirements makes many of the suggestions in this thread impossible.

Gil Mesa

I don't know what is frowned upon or banned, but I personally can't imagine taking or giving a referral fee.

My practice, and presumably those of the attorneys I respect, admire and make part of my circle of influence is looking after the needs of clients and serving them well. Serving clients best interests, wherever they come from, is the name of the game. Not getting some fee for an introduction.

Maybe I'm just stupid, but I find the whole idea of referral fees in our business unpalatable. The referrer benefits from making the referral and looking good and smart. The referral recipient benefits from an introduction to a potential client. The client benefits from having multiple potential service providers who know what they're doing and can do a good job. That is what counts in my world. Yours may vary.

Diana Laskaris

referral fees are frowned upon by all states

Absolutely untrue!

In CA, which does not follow the ABA Model Rules, referral fees are not frowned on (nor does the referring attorney have to share responsibility for the matter). Disclosure and written consent are required, and the fee can't be increased. Since referral fees are mostly paid in connection with PI matters, where the fee is typically a percentage of the recovery, the fee

would almost never be affected anyway. Market economics alone suffice to discourage referral fees in most hourly rate matters.

CA long ago recognized that the "frowning upon" referral fees discouraged lawyers from referring cases to more experienced, better financed lawyers. If a lawyer has a juicy PI case but is inexperienced or can't finance the matter, *it is better for the client that the lawyer refer it out*. Many lawyers who aren't top PI lawyers would rather get a referral fee that is a portion of the total fee without having to work the case or be responsible for it than work the case for the entire fee. The client is better served by being referred to a top lawyer. Since virtually all the top PI lawyers in CA pay referral fees, the referring lawyer has his or her pick of whom to refer the matter to, and since the referral fee depends on the total recovery (typically being a portion of the contingent fee), the referring lawyer has every incentive to find the best lawyer (and is usually better able to do so than the first-time PI client). The client comes out by being better served by the referral. And here in CA, we don't frown on that.

So, is it foolish to have this discussion online? Apparently not, and I hope at least one lawyer learned something from it.

Richard Burt

I could not agree more, and that is how always felt about it. My gain for referring cases I do not handle is that many of those attorneys will refer me cases. (Also, that client may call me later when it is something I do since I was so helpful with their other case)

But I was suddenly worried that I was "the jerk" that did not pay any referral fees.

Thanks for all of the responses.

Sean M. Sweeney

In NY, see DR 2 107, which I assume is reasonably in accord with the DR's across the board. It permits fee sharing after disclosure to and consent by the client. It prohibits payment to a lawyer who doesn't work on the file, which is, by definition and practice, what a referral fee is. The rule is pretty clear.

Jeff Solomon

They are permitted in Virginia.

Deborah G. Matthews

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