



December 10, 2020

Allowing lawyers to enter into new and varied business arrangements to increase innovation and efficiency in Utah’s legal market and thereby increase access to justice is a central goal of the Court’s regulatory reform efforts. Permitting lawyers to share fees with nonlawyers is an aspect of these efforts. Thus, the Court, on September 1, 2020, authorized the sharing of reasonable fees with nonlawyers within the oversight of the regulatory reform Sandbox. It has become apparent, however, that the payment of referral fees—compensation paid to nonlawyers for the sole purpose of ensuring the referral of legal work—presents potential ethical challenges for lawyers and needs further informed consideration by the Court.

In light of this need for further study, as of today the Court is halting the consideration and authorization of bare referral fee arrangements paid by lawyers to nonlawyers. Bare referral fee arrangements are those in which payment is made by the lawyer to the nonlawyer solely to compensate the nonlawyer for referring a potential client to the lawyer; there is no other business relationship between the lawyer and nonlawyer.

The Court will ask its advisory committee on the rules of professional responsibility to undertake further study of the issue of referral fees paid to nonlawyers. The committee’s mandate in this regard will be to consider and recommend any further ethical guidance to be given to lawyers entering into referral fee arrangements with nonlawyers and to consider whether and how to oversee those arrangements, including whether the collection of data from lawyers in referral fee arrangements will be necessary. One of the committee’s first items of business will be evaluating whether to amend Rule 1.5(a) to

clarify that the percentage of a fee paid as a referral to a nonlawyer is a factor to be considered in the reasonableness of the fee.

Applications to the Office solely proposing referral fee arrangements without any other non-traditional services or models will be tabled until further notice from the Court. The Court will, however, continue to consider and, as appropriate, authorize, other innovative business arrangements and service models involving lawyers and nonlawyers that incorporate innovations beyond bare referral fee arrangements. Such arrangements and services will be processed through the Sandbox via the Innovation Office's regulatory framework.