

Ethical Coffee Break No. 11 (February 2012)

NATIONAL

What has been happening recently at the American Bar Association?

It may be interesting for you to know that:

- The ABA withdrew the draft ABA guidelines for Conduct of Experts Retained by Lawyers, developed by the ABA Section of Litigation, for additional discussion among ABA entities.
- The ABA Ethics 20/20 Commission is re-discussing the question of whether law firms should be permitted to include non-lawyers among their owners.
- The ABA Ethics 20/20 Commission is re-considering the question of whether lawyers may reach a private agreement with a client where a choice of rules provision would govern the representation.
- The ABA Ethics 20/20 Commission rejected a proposal to allow lawyers to pay others for recommending their services. Currently, Model Rule 7.2 of the Professional Rules of Conduct prohibits this practice.

SOUTH CAROLINA

A contingent fee, payable to a lawyer as a partial ownership interest in real property with the client, may be permissible.

In *Ethics Advisory Opinion 12-02*, the Ethics Advisory Committee opined that an attorney may acquire partial ownership in real property in a quiet title action under a contingency fee agreement if the client is advised to seek independent legal advice, the client consents in writing, the terms are reasonable, and the transaction is fully disclosed in writing.

In SC, lawyers' participation in "Questions and Answers" websites is allowed with some precautions.

In *Ethics Advisory Opinion 12-03*, the Ethics Advisory Committee decided that a lawyer may not answer legal questions as an "expert" on a topical website for compensation where the website disclaims the attorney-client privilege and cautions users against reliance on the advice.

NEW YORK

A NY attorney practicing in DC may share fees with nonlawyer partners.

In *Ethics Opinion 889*, the New York State Bar Association Committee on Professional Ethics opined that a New York attorney practicing in another jurisdiction that allows partnership with non-lawyers may share fees earned in New York with the non-lawyer partners of the other jurisdiction.

Which are the rules for a discounted legal service offer?

In *Ethics Opinion 897*, the New York State Bar Association Committee on Professional Ethics opined that a lawyer may market legal services on a “deal of the day” website if the advertising is not misleading and states that a lawyer-client relationship will not be created until the lawyer performs conflict and competence evaluations. If the lawyer uncovers conflict of competence issues, the lawyer must refund the buyer. If the buyer of the coupon terminates the representation, he is entitled to a refund, subject to the lawyer’s *quantum meruit* claim.

In NY lawyers’ participation in “Questions and Answers” websites is allowed but cannot import solicitation of clients.

In *Ethics Opinion 899*, the New York State Bar Association Committee on Professional Ethics opined that a lawyer may provide general answers to legal questions from laymen on interactive websites, but the lawyer cannot solicit clients in violation of Rule 7.3. A lawyer must respond with a private written proposal off the website if a person initiates a request on the website to retain the lawyer.

Advertising FSQ.

The New York City Bar Committee on Professional Ethics prepared a series of common questions regarding New York’s lawyer advertising and solicitation rules that were adopted within the past few years and included in the Rules of Professional Conduct that became effective in April 2009. The full text can be found at <http://www.nycbar.org/ethics/ethics-faq#advertise>.