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**E-79-4      Bank referral of estate planning  
customers to attorney**

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**Question**

Is it ethical for a bank to recommend to existing and prospective customers the availability of a particular attorney's services for estate planning? The specific facts are as follows:

**Facts**

A bank, in order to serve its present customers and to attract new customers, would like to inform area residents of the importance of estate planning and to refer them to an estate planning attorney who happens to be the son of the bank's president and majority shareholder. The attorney, who normally practices outside the bank's vicinity, would make periodic trips to the bank to meet with prospective estate planning customers. The attorney would not be employed by the bank, but rather by the individual clients.

**Opinion**

DR 2-103(B) prohibits an attorney from giving anything of value in exchange for solicitation of clients by a third party. It is clear that the bank receives a benefit—more customers and more satisfied customers and, ABA and other bar opinions, as well as policy considerations, make clear that such conduct is in fact unethical solicitation.

In ABA Informal Opinion C-471, the committee ruled upon the conduct of an attorney who allowed an independent investigator to solicit clients and contract with them for the attorney. The conduct was deemed unethical solicitation. In Informal Opinion 1236, a non-profit club recommended the discounted services of its counsel to the club's members. Although the conduct was found unethical on other grounds, the committee was careful to note the importance of the non-profit nature of the club, thereby precluding any benefit accruing to the club. Such a factor, of course, is not present in the case before this committee and is of determinative importance on this issue. Finally, to allow an attorney

to permit others to solicit business for him, when the attorney is barred from such activity personally, would eviscerate the rules prohibiting solicitation. *See also* Texas Bar Opinion #373; Idaho Opinion 8a.

It is improper for a lawyer to accept employment when he knows it was solicited by a lay intermediary (*cf.* Informal decision C-679). EC 2-8 states, “A layman is best served if the recommendation is disinterested. . . .” Other bar opinions make clear that the relationship before the committee is an improper intervention of an intermediary. In Texas Opinion 373, the Bar held that a lawyer may not participate in an arrangement with a layperson that offers estate planning services, whereby the lawyer drafts instruments for people referred to him by the layperson. This appears to be identical to the situation before us, and we adopt the Texas position. *See also* ABA Informal Opinion 1236.