

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
APPLICATION OF CLC,
INCORPORATED.

No. 44727

FILED

SEP 13 2005

JANE PTAK BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER GRANTING PETITION FOR
CERTIFICATION OF LEGAL SERVICES PLAN
UNDER SCR 42.5

This petition seeks certification of a legal services plan under SCR 42.5. We previously referred the petition to the state bar for review and comment.¹ The state bar then filed a report with this court concluding that petitioner CLC, Inc.'s plan substantially complies with SCR 42.5's requirements. But the state bar expressed concern about three provisions in the plan and recommended that the plan be certified only on the condition that these provisions be deleted or modified. CLC filed a reply, in which it agreed to make one of the state bar's recommended modifications, but argues that the state bar's other two concerns are without merit and should not prevent certification of the plan.

CLC markets its plan as an employee benefit to employee assistance plans and employers. It offers two forms of billing to its clients. Under the "per-member-per-month" billing, the client is billed a set fee each month per covered employee. The state bar has no objection to this form of billing. Under the "fee-for-service" form, the client pays a set fee

¹See SCR 42.5(5)(f).

each time one of its covered employees requests a referral to a plan attorney, with a minimum monthly fee. The same fee is charged regardless of whether the employee actually retains the plan attorney, or even whether the employee calls the plan attorney, and the fee bears no relation to the actual services rendered by the plan attorney, which may be negligible or may be substantial. Neither the employee nor the plan attorney pays CLC anything.

The state bar contends that the “fee-for-service” program results in an impermissible referral fee, and that since CLC is not a bar organization that may operate a referral service under SCR 42.5(3), we should restrict certification to CLC’s “per-member-per-month” plan. CLC argues that the fee is neither an impermissible referral fee nor results in impermissible fee-splitting under SCR 188, because the attorney does not pay the fee and the fee bears no relation to the scope of services rendered. According to CLC, the “fee-for-service” billing option is a necessary marketing tool because it permits a client to select the most economical billing form based on the number of employees and the types of legal matters they likely have.

SCR 42.5(3) permits a lawyer to cooperate in a dignified manner with the legal service activities of a lawyer referral service operated, sponsored or approved by a state or local bar organization, so long as the lawyer’s independent professional judgment is exercised on the client’s behalf without interference. SCR 42.5(5) permits a lawyer to cooperate in a dignified manner with the legal service activities of an organization that recommends, furnishes or pays for legal services to its members or beneficiaries, so long as the requirements listed in SCR 42.5(5) are met. One of those requirements is that the organization shall not derive a profit or commercial benefit from the rendition of legal

services, and another is that the parties must agree that the lawyer must comply with the rules of professional conduct. We conclude that the “fee-for-service” billing option does not violate either of these provisions. Since the flat service fee bears no relation to the services actually rendered by the plan attorney (if any), it does not constitute fee-splitting under SCR 188. Also, the fee is charged to the client regardless of whether the employee retains the attorney, or even calls the attorney. Thus, the fee is not based on the “rendition of legal services by the lawyer.” SCR 42.5 cannot be construed as prohibiting a legal services plan under SCR 42.5(5) from referring clients to plan attorneys, since that is in essence what most legal service plans do. Rather, SCR 42.5(3) provides a referral service sponsored by a bar organization with automatic approval, while SCR 42.5(5) requires a detailed showing from private, for-profit legal services plans.

The state bar’s second objection concerns the “unlimited” telephone calls permitted under Level IV of CLC’s plan. While we share the state bar’s concern that a provision requiring a lawyer to be available for “unlimited” telephone calls may prove overly burdensome on solo practitioners or small firms, we conclude that CLC’s plan contains sufficient safeguards. First, the initial choice to offer Level IV services is the attorney’s. When applying to become a CLC plan attorney, the lawyer is asked to indicate what level(s) of service the lawyer agrees to provide. Levels I, II and III do not provide for “unlimited” telephone calls. Second, the plan documents specifically provide that an attorney may terminate a representation, so long as the withdrawal does not violate any ethical rules. It appears that a client who abuses the “unlimited” telephone call provision would likely render the representation unreasonably difficult, thus permitting withdrawal under SCR 166(2)(e). Finally, we note that

according to the affidavit of CLC Executive Vice President Duncan Hay, CLC has been offering similar plans since 1986, and has not experienced any difficulties as a result of the "unlimited" provision. We conclude that this aspect of CLC's plan should not prevent its certification.

Finally, the state bar has asked that CLC's Nevada addendum to the Delivery of Services Agreements between CLC and its plan attorneys specifically provide that nothing in the agreement can interfere with the lawyer's duties to the client under the applicable ethical rules. CLC has agreed to insert the provision in its addendum.

We have reviewed the documentation and the letter of exemption provided by CLC, and we conclude that it has demonstrated that its program satisfies the requirements of SCR 42.5. Accordingly, we grant the petition, subject to amendment of the Nevada addendum as described above.

It is so ORDERED.

Becker, C.J.

Becker

Rose, J.
Rose

Maupin, J.
Maupin

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

cc: Rob W. Bare, Bar Counsel
Allen W. Kimbrough, Executive Director
Nikolas L. Mastrangelo