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Are Legal Aid Societies, Lawyer Referral Services, and Group Legal Services Adequate under the Code of Professional Responsibility

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Comment

ARE LEGAL AID SOCIETIES, LAWYER REFERRAL SERVICES AND GROUP LEGAL SERVICES ADEQUATE UNDER THE CODE OF PROFESSIONAL RESPONSIBILITY?

While other professions have attempted to make their services more readily available in recent years, the legal profession's availability has remained relatively static. Today there is a considerable lack of legal services for a great majority of the people. This lack of available services is most critical in the lower and middle income classes.[1] Only recently have any remedies to this problem been suggested and actively undertaken. Legal aid societies, lawyer referral services and group legal service plans are the three primary methods used to combat the problem. Legal aid societies are primarily for lower income individuals while group legal service plans and lawyer referral services are mainly for use by the middle class.[2] However, at this time only the legal aid societies and the lawyer referral plans have become workable tools. Group legal service programs are not yet sufficiently established to provide adequate relief.

It is the purpose of this article to consider the effect of these programs on the lower and middle income classes. Since legal aid societies and lawyer referral plans are becoming well established, the first portion of this paper will be devoted to a brief history of legal aid societies and lawyer referral plans and the development of the present need for group legal service plans. It will be shown that even though both legal aid societies and lawyer referral plans are providing more people in the low and middle classes with legal services, there still is a failure to provide legal services for the middle class. A detailed consideration of group legal service plans case law will then be developed in an effort to demonstrate how acceptable such plans are to the courts.

The second portion of the article will be devoted to a critical analysis of why the legal aid societies and lawyer referral plans are so widely accepted when group legal service plans are struggling for recognition. Of particular importance will be a discussion of the old *Canons of Ethics* and the new *Code of Professional Responsibility*. It will be shown that the American Bar Association and the

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[1] B. CHRISTENSEN, LAWYERS FOR PEOPLE OF MODERATE MEANS (1970); M. BLOOM, THE TROUBLE WITH LAWYERS (1969).

[2] B. CHRISTENSON, *supra* note 1, at 190.

legal profession in general have seen fit to make express provisions in the new Code to accommodate legal aid societies and lawyer referral plans. Particular attention will be given to the absence of adequate provisions in the *Code of Professional Responsibility* to support group legal service plans.

AN INITIAL RESPONSE TO THE GROWING NEED

The two initial responses to the need for legal services for the low and middle income classes came in the development of legal aid societies and lawyer referral plans. The former, providing charitable assistance,[3] was aimed at individuals in the poverty class without the means to afford legal services. The latter was formed for those individuals whose incomes were too great to qualify for legal aid but needed assistance in contacting available attorneys. As the Standing Committee on Lawyer Referral Services of the American Bar Association noted:

> The referral service and legal aid are closely related. Both represent an effort to make the services of the profession available to all people regardless of means. Whenever a legal aid office is established there arises almost immediately a need for some form of referral plan because clients of means are ineligible for the services of legal aid, yet the latter is obviously reluctant to send such people away without advice as to how the services of a lawyer may be obtained. On the other hand, if a referral service is set up in a community that has no legal aid of any kind, prospective clients who lack the means of paying even the moderate fee of the referral service will quickly point up the community's need for legal aid.[4]

The Committee then considered the present state of affairs of the legal aid and lawyer referral services.

> The profession has not worked up anything as spectacular as the Blue Cross, which provides forty million people, one-quarter of the entire nation, with assistance toward the obtaining of medical care. However, the device of legal aid has set an example of organized bar association activity in the direction of better public understanding of the work of lawyers, in addition to making substantial inroads in the legal problems of the indigent class. The lawyer referral service presents a plan whereby the services of the entire profession are made available to the greatest single group in the nation's population, the often forgotten class of people who have moderate means.[5]

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[3] AMERICAN BAR ASSOCIATION, HANDBOOK ON THE LAWYER REFERRAL SERVICES 19 (4th ed. 1958).

[4] *Id.* at 18.

[5] *Id.* at 5.

Even though both the legal aid societies and the lawyer referral services have been highly successful, "there is an unfulfilled public need for legal services . . . the public from time to time is confronted with problems for which legal assistance would be on any standard, highly desirable, but where legal assistance is not obtained."[6]

To solve this problem of ever-increasing need, the development of group legal services is required.

> . . . "[G]roup Legal Services" mean that legal services are being performed by a member of the bar to a group of individuals who have a common problem or problems, or who have joined together as a means of best bargaining for a predetermined position, or who have voluntarily formed or become a member of an association with the idea that such association shall perform a service to its members in a particular field or activity, or where by virtue of common interest of an employer or employee it appears that the organization can gain a benefit to the members as a whole. Examples of such organizations are labor unions, employer organizations, trade organizations, teachers' groups, civil service employees of the state, county, or city, club members of a social club or of an automobile club, or fraternal organization, and numerous other such groups. Included also in the definition may be groups who may associate themselves together for the purpose of establishing a plan to be rendered to individual members thereof, whether or not the members have a common interest in a certain field or activity.[7]

Prior to the development of group legal service plans laymen had asked the legal profession why "individuals may band together to provide themselves with cheaper insurance, cheaper groceries, higher wages, better prices, easier credits, lower taxes, better health—everything, except better or cheaper legal advice or aid?"[8] The legal profession responded with positive group legal assistance in clubs,[9] trade unions[10] and associations.[11] It seems quite probable therefore that the problem of providing adequate legal service for the greatest number of people will fall into the category of group legal service plans.

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[6] *Report of Committee on Group Legal Services,* 39 CAL. S.B.J. 639, 652 (1964).

[7] *Committee Report—Group Legal Services,* 35 CAL. S.B.J. 710, 712 (1960).

[8] Weihofen, *Practice of Law by Non-Pecuniary Corporations: A Social Utility,* 2 U. CHI. L. REV. 119, 128 (1934).

[9] *See, e.g.,* People *ex rel.* Chicago Bar Ass'n v. Chicago Motor Club, 362 Ill. 50, 199 N.E. 1 (1935).

[10] *See, e.g.,* United Mine Workers v. Illinois State Bar Ass'n, 389 U.S. 217 (1967); Brotherhood of Railroad Trainmen v. Virginia *ex rel.* Virginia State Bar, 377 U.S. 1 (1964).

[11] *See, e.g.,* NAACP v. Button, 371 U.S. 415 (1963).

With this general background of how the development of legal aid societies and lawyer referral plans led to the adoption of large scale group legal service arrangements, consideration will now be given to the case law development of group legal service plans.

THE JUDICIARY'S DEVELOPMENT OF GROUP LEGAL SERVICES

The development of the group legal service plan is in large part attributable to the court's aid. One of the first cases involving the group legal service issue was a New York decision[12] in which a company had maintained a staff of attorneys to furnish its subscribers with legal advice and service. In invalidating the plan the New York court said:

> The relation of attorney and client is that of master and servant in a limited and dignified sense, and it involves the highest trust and confidence. It cannot be delegated without consent, and it cannot exist between an attorney employed by a corporation to practice law for it, and a client of the corporation, for he would be subject to the directions of the corporation. . . . The bar, which is an institution of the highest usefulness and standing, would be degraded if even its humblest member became subject to the orders of a money-making corporation engaged not in conducting litigation for itself, but in the business of conducting litigation for others.[13]

In the years following, the courts struck down all attempts to form group legal service plans within home-owners' associations,[14] taxpayers' associations[15] and motorists' groups[16] for many of the same reasons as stated in the New York opinion. However, in 1932 the Illinois Appellate Court in *Ryan v. Pennsylvania Railroad Co.*[17] recognized a right of association for the purpose of attaining legal services. *Ryan* involved a regional counsel for the Brotherhood of Railroad Trainmen who brought an action against the Pennsylvania Railroad to collect his fees. The attorney was available to the employees under an agreement between the union and selected attorneys to provide legal services. The attorney claimed the fees pursuant to a contingent fee contract with one of the railroad's injured employees who was a member of the Brotherhood. The

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[12] *In re* Co-operative Law Co., 198 N.Y. 479, 92 N.E. 15 (1910).
[13] *Id.* at 483-84, 92 N.E. at 16.
[14] Dworken v. Department Home Owners Ass'n, 38 Ohio App. 265, 176 N.E. 577 (1931).
[15] People *ex rel.* Courtney v. Association of Real Estate Taxpayers, 354 Ill. 102, 187 N.E. 823 (1933).
[16] People *ex rel.* Chicago Bar Ass'n v. Motorists' Ass'n, 354 Ill. 595, 188 N.E. 827 (1933).
[17] 268 Ill. App. 364 (1932).

employee, without the attorney's consent or knowledge, had made a settlement with the railroad after suit had been initiated. The railroad defended on the ground that the contract of employment was contrary to public policy and therefore unenforceable. The court rejected this argument and stated: "The evidence, *introduced by respondent,* shows clearly the worthy purpose of the [group legal services] department and the necessity for its organization and maintenance."[18]

The next major advancement for group legal service plans came in four United States Supreme Court decisions: *NAACP v. Button;*[19] *Brotherhood of Railroad Trainmen v. Virginia State Bar;*[20] *United Mine Workers of America v. Illinois State Bar;*[21] and *United Transportation Union v. State Bar of Michigan.*[22] *NAACP v. Button* involved the Virginia Conference of NAACP branches. The Virginia branch had a staff of fifteen attorneys elected by the local NAACP staff. The attorneys followed NAACP legal guidelines and limited their case load to only those cases involving racial discrimination. The NAACP defrayed the cost of all litigation, and the lawyers were paid a rate somewhat lower than "normal." In cases handled by these attorneys the litigant was retaining the services of the staff and not any one particular attorney.

The NAACP brought suit to enjoin the enforcement of a state statute which prohibited attorneys from soliciting business through lay intermediaries on the ground that, when applied to NAACP activities, it was in violation of the First Amendment. The United States Supreme Court struck down the statute and found that:

> [Under the statute] a person who advises another that his legal rights have been infringed and refers him to a particular attorney or group of attorneys . . . for assistance has committed a crime . . . . There thus inheres in the statute the gravest danger of smothering all discussion looking to the eventual institution of litigation on behalf of the rights of members of an unpopular minority.[23]

The court felt that "[f]ree trade in ideas means free trade in the opportunity to persuade to action, not merely to describe facts."[24] The NAACP case symbolizes the political freedoms of expression and association under the First Amendment which serve as the basis for later court decisions upholding group legal service plans.

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[18] *Id.* at 374.
[19] 371 U.S. 415 (1963).
[20] 377 U.S. 1 (1964).
[21] 389 U.S. 217 (1967).
[22] 401 U.S. 576 (1971).
[23] 371 U.S. 415, 434 (1963).
[24] Thomas v. Collins, 323 U.S. 516, 537 (1945).

The second major case involved the Brotherhood of Railroad Trainmen.[25] A plan[26] was created by the union whereby the members could avail themselves of a group of lawyers referred to them by the union. The union officials and members of the legal profession had sensed a need on the part of workers to receive representation in the area of injury settlements. Through the union arrangement lawyers were selected on the basis of strong moral character and competence, and the purpose of the plan was "to channel legal employment to the particular lawyers approved by the Brotherhood."[27] Because of the expected quantity of claims for representation, the legal fees were reduced. The Virginia Court found that the plan violated the state's rules against solicitation of legal business and the unauthorized practice of law. The Supreme Court reversed and held that the plan was protected under the First Amendment.

> [F]irst Amendment's guarantees of free speech, petition and assembly give railroad workers the right to gather together for the lawful purpose of helping and advising one another in asserting the rights Congress gave them in the Safety Appliance Act and the Federal Employer's Liability Act. . . . The right of the members to consult with each other in a fraternal organization necessarily includes the right to select a spokesman from their ranks who could be expected to give the wisest counsel. That is the role played by the members who carry out the legal aid programs. And the right of workers personally or through a special department of their Brotherhood to advise concerning the need for legal assistance—and, most importantly, what lawyer a member could confidently rely on—is an inseparable part of this constitutionally guaranteed right to assist and advise each other.[28]

While the argument could be made that *Button* was a political decision, one is hard pressed to make that claim concerning the *BRT* decision. The *BRT* case provided further proof that group legal service plans are a legal and necessary institution.

It was found that the group legal service plans upheld in *BRT* provided these functions:

> The *public awareness* function is the utilization of the group to appraise the members of their legal rights and of the general availability of lawyers to vindicate those rights. In *Button* it was civil rights, in *BRT* claims under the FELA.

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[25] Brotherhood of Railroad Trainmen v. Virginia *ex rel.* Virginia State Bar, 377 U.S. 1 (1964).

[26] Schwartz, *Foreword: Group Legal Services in Prospective,* 12 U.C.L.A. L. REV. 279, 281 (1965).

[27] 377 U.S. 1, 5 (1964).

[28] *Id.* at 5, 6.

> The *contacting* function is the bringing together of the client and a particular lawyer. It can be described invidiously as "channeling"; in more invidious or extreme forms it can be termed "running." Certainly, solicitation and advertising in the traditionally prohibited sense of lawyers making their availability known in acceptable ways are involved. For this is the function served by the group when it recommends, as did both the NAACP and the Brotherhood, particular lawyers to prospective clients to handle their legal affairs.
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> The *economic* function relates to the pricing of legal services. A group may affect the price of legal services which any one client pays in two ways. The first is by adoption of an insurance principle, spreading the cost over a large number of potential clients (*i.e.*, the members of the group) so that the financial burden of the individual legal service which might otherwise fall on one member is borne by all. All members of the group who are equally likely to be subject to the cost, but those who do not happen to be will, nonetheless, share it. The second way is by increasing the volume of particular kinds of legal services so as to render the handling of any one instance more efficient and thus less costly.[29]

Once the *BRT* decision was rendered, those that had previously felt that the *NAACP* decision was based purely on political grounds began to consider future activities of group legal service plans. In the *United Mine Workers* case[30] the Court was faced with a group legal service that was one step removed from *BRT*. The union retained a lawyer and paid him an annual salary. His sole duty was to represent any of the workers in workmen's compensation disputes; thus, the only contact the union had with the lawyer was the payment of his salary. When the employee had a claim, the attorney would investigate it and try to procure a settlement. If satisfactory terms could not be procured, the lawyer and the employee would take the case before the Illinois Industrial Commission. All payments went directly to the employee.

The Illinois State Bar Association sought injunctive relief against what they termed to be an unauthorized practice of law. The Illinois Supreme Court granted the relief on the grounds that *Button* applied only where political rights were involved and that *BRT* only applied to a referral system. The United States Supreme Court again reversed and held that "the freedom of speech, assembly, and petition guaranteed by the First and Fourteenth Amendments gives petitioner the right to hire attorneys on a salary basis to assist its members in the assertion of their legal rights."[31] The Supreme Court based their decision on a balancing test, finding that the

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[29] Schwartz, *supra* note 26, at 285-86.

[30] United Mine Workers v. Illinois State Bar, 389 U.S. 217 (1967).

[31] *Id.* at 221-22.

state's interest in regulating such conduct was not equal to the rights guaranteed under the First and Fourteenth Amendments.

The most recent case concerning group legal services is *United Transportation Union v. State Bar of Michigan.*[32] The Michigan Bar in their complaint against the Brotherhood of Railroad Trainmen charged "that the union recommended selective attorneys to its members and their families, that it secured a commitment from those attorneys that the maximum fee charged would not exceed 25% of the recovery, and that it recommended Chicago lawyers to represent Michigan claimants."[33] The Supreme Court held that the injunctive relief granted by the Supreme Court of Michigan was overbroad as violating the First Amendment rights of the union and its members to engage in collective activity to obtain meaningful access to the courts.

In speaking for the majority of the court Mr. Justice Black found that the opinion in *BRT* "left no doubt that workers have a right under the First Amendment to act collectively to secure good, honest lawyers to assert their claims against railroads."[34] He further declared that if free legal services were available under *United Mine Workers v. Illinois State Bar Association,* then the Bar was now precluded from challenging the validity of a 25% guaranteed charge.

In upholding the complete validity of the Brotherhood plan the court reiterated its prior holdings:

> At issue is the basic right to group legal action, a right first asserted in this Court by an association of Negroes seeking the protection of freedoms guaranteed by the Constitution. The common threat running through our decision in *NAACP v. Button, Trainmen,* and *United Mine Workers* is that collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment.[35]

Through these four decisions the Court has realized the present and future importance of legal assistance for all and has also provided a constitutional foundation. Although it can readily be seen that there is more than adequate support for group legal service programs in the case law, the group legal service plans cannot be effective without adequate support of the American Bar Association and the legal profession in general. In the following section it will be shown that although the *Code of Professional Responsibility* ex-

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[32] 401 U.S. 576 (1971).
[33] *Id.* at 577.
[34] *Id.* at 579.
[35] *Id.* at 585.

pressly authorizes the legal profession to support legal aid societies and lawyer referral services, there is no such express authorization concerning group legal service plans.

FROM THE CANONS OF PROFESSIONAL ETHICS TO THE CODE OF PROFESSIONAL RESPONSIBILITY

BACKGROUND

The *Canons of Professional Ethics* and now the *Code of Professional Responsibility* guide lawyers and judges in this area of the law and the practice as well as others. A tracing of the Canons and the Code will help lay a ground work of understanding in the areas of legal aid, lawyer referral plans and group legal services.

Until quite recently, case law that dealt with any ethical consideration at all was faced with antiquated Canons:

> The original 32 Canons of Professional Ethics were adopted by the American Bar Association in 1908. They were based principally on the Code of Ethics adopted by the Alabama State Bar Association in 1887, which in turn had been borrowed largely from the lectures of Judge George Sharswood, published in 1854 under the title of *Professional Ethics*. Since then a limited number of amendments have been adopted on a piecemeal basis.[36]

After continued debate, and a failure of the Canons to provide adequate guidelines, a Special Committee on evaluation of the ABA began in 1964 the drafting of a new *Code of Professional Responsibility and Canons of Professional Ethics.*

AS APPLIED TO LEGAL AID SERVICES AND LAWYER REFERRAL PLANS

Legal aid societies, lawyer referral plans and group legal service plans have been affected most by Canons 27 and 28 (solicitation and advertising), 35 (lay intermediaries) and 47 (unauthorized practice of law).

In 1925 the American Bar Association promulgated Opinion No. 8 which in effect said that a lawyer could not accept employment as a part-time employee of the legal department of an auto club which offered legal assistance to its members. It was felt this was a form of solicitation and exploitation of professional services by a lay intermediary.[37] As a response to this, Canon 35 was adopted

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[36] ABA CODE OF PROFESSIONAL RESPONSIBILITY at i (1965) [hereinafter cited as CODE].

[37] *See* H. DRINKER, LEGAL ETHICS 163 (1953).

in 1928.[38] The Canon expressly provided that "charitable societies rendering aid to the indigent are not deemed such intermediaries." Therefore, legal aid societies are not one of the prohibited lay intermediaries provided for in Canon 35.

It has further been found that Canon 27[39] and 28[40] were not violated by the legal aid societies. It was felt by many that:

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[38] Canon 35 provides: "The professional services of a lawyer should not be controlled or exploited by any lay agency personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries. A lawyer may accept employment from any organization such as an association, club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested, but this employment should not include the rendering of legal services to the members of such organization in respect to their individual affairs."

[39] Canon 27 provides: "It is unprofessional to solicit professional employment by circulars, advertisements, through touters or by personal communications or interviews not warranted by personal relations. Indirect advertisements for professional employment such as furnishing or inspiring newspaper comments, or procuring his photograph to be published in connection with causes in which the lawyer has been or is engaged or concerning the manner of their conduct, the magnitude of the interest involved, the importance of the lawyer's position, and all other like self-laudation, offend the traditions and lower the tone of our profession and are reprehensible . . . ."

[40] Canon 28 provides: "It is unprofessional for a lawyer to volunteer advice to bring a lawsuit, except in rare cases where ties of blood, relationship or trust make it his duty to do so. Stirring up strife and litigation is not only unprofessional, but it is indictable at common law. It is disreputable to hunt up defects in titles or other causes of action and inform thereof in order to be employed to bring suit or collect judgment, or to breed litigation by seeking out those with claims for personal injuries or those having any other grounds of action in order to secure them as clients, or to employ agents or runners for like purposes, or to pay or reward, directly or indirectly, those who bring or influence the bringing of such cases to his office, or to remunerate policemen, court or prison officials, physicians, hospital *attaches* or others who may succeed, under the guise of giving disinterested friendly advice, in influencing the criminal, the sick and the injured, the ignorant or others, to seek his professional services. A duty to the public and to the profession develops upon every member of the Bar having knowledge of such practices upon the part of any practitioner immediately to inform thereof, to the end that the offender may be disbarred."

> Canons 27 and 28 were not designed and should not be interpreted to restrict the activities of attorneys who wish to offer their services free, on a *pro bono publico* basis. The Canons are directed against the commercialization of the legal profession, and are designed to restrict the activities of persons more interested in making money than in serving the interests of the law.[41]

The American Bar Association has also given strong support to this interpretation. The American Bar Association Committee on Professional Ethics stated:

> The defense of indigent citizens, without compensation, is carried on throughout the country by lawyers representing legal aid societies, not only with the approval but with the commendation of those acquainted with the work. Not infrequently services are rendered out of sympathy or for other philanthropic reasons, by individual lawyers who do not represent legal aid societies. There is nothing whatever in the Canons to prevent a lawyer from performing such an act, nor should there be.[42]

The present *Code of Professional Responsibility* expressly provides a sound ethical basis for both legal aid societies and lawyer referral services. According to Ethical Consideration 2-15, "lawyers should support the principle of lawyer referral systems and should encourage the evolution of other ethical plans which aid in the selection of qualified counsel."[43] Ethical Consideration 2-16 lends further support by stating that "persons unable to pay all or a portion of a reasonable fee should be able to obtain necessary legal services, and lawyers should support and participate in ethical activities designed to achieve that objective."[44] Disciplinary Rule 2-103 (C) (D) provides a more expanded basis for protecting lawyers who choose to become involved in such plans from disciplinary action from the bar association.[45]

The express authority for legal aid societies and lawyer referral plans has been adequately demonstrated. The Code not only provides authorization for these two methods, it provides protection for lawyers that participate in them. It is, however, undeniably evident that these express provisions do not adequately provide for group legal service plans.

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[41] Padnos, *Legal Aid and Legal Ethics*, 5 GA. S.B.J. 347, 348 (1958).

[42] ABA COMM. ON PROFESSIONAL ETHICS, OPINIONS, No. 148 (1935).

[43] CODE Canon No. 2, EC 2-15.

[44] CODE Canon No. 2, EC 2-16.

[45] *See* CODE Canon No. 2, DR 2-103 (C) (D).

AS APPLIED TO GROUP LEGAL SERVICES

The same type of ethical arguments and considerations that have been considered in the previous sections regarding legal aid societies and lawyer referral services are considered once again with regard to group legal services. Undoubtedly the strongest criticism of group legal service plans arises from the fact that the group-intermediary exercises a varying degree of control over its attorneys and, consequently, jeopardizes the precious attorney-client relationship.[46]

The new *Code of Professional Responsibility*[47] in Disciplinary Rule 2-103(D) (5)[48] deals with group legal services.

> A lawyer shall not knowingly assist a person or organization that recommends, furnishes, or pays for legal services to promote the use of his service or those of his partners or associates. However, he may cooperate in a dignified manner with the legal service activities of any of the following, provided that his independent professional judgment is exercised in behalf of his client without interference or control by any organization or other person . . . .

Subparagraphs (1), (2), (3), and (4) refer to legal aid offices or public defenders, military legal assistance officers, lawyer referral services, and bar association representatives. Subparagraph (5) reads:

> (5) Any other non-profit organization that recommends, furnishes or pays for legal services to its members the extent that controlling constitutional interpretation at the time of the rendition of the services requires the allowance of such legal service activities, and only if the following conditions, unless prohibited by such interpretation, are met:
>
> (a) The primary purposes of such organizations do not include the rendition of legal services.
>
> (b) The recommending, furnishing, or paying for legal services to its member is incidental and reasonably related to the primary purposes of such organization.
>
> (c) Such organization does not derive a financial benefit from rendition of legal services by the lawyer.
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> (d) The member or beneficiary for whom the legal services are rendered, and not such organization, is recognized as the client of the lawyer in the matter.

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[46] Note, *Group Legal Services: The Ethical Traditions and The Constitution*, 43 ST. JOHNS L. REV. 82, 90 (1968).

[47] The Code was unanimously adopted by the House of Delegates of the American Bar Association on August 12, 1969, and it became effective on January 1, 1970. *Association's House of Delegates Meets*, 55 A.B.A.J. 970 (1969).

[48] CODE Canon No. 2, DR 2-103(D) (5).

According to the chairman of the committee that drafted the Code:

> The Committee felt compelled to draft in accordance with decisions of the United States Supreme Court in the cases *NAACP v. Button*, 371 U.S. 415 (1963), *Brotherhood of RR Trainmen v. Virginia*, 377 U.S. 1 (1964), and *Mine Workers of America v. Illinois State Bar Association*, 389 U.S. 217 (1967), but the code does not expand the concept of group legal services.[49]

This statement exhibits the defiance which the code drafters had for the Court's decisions and the development of group legal service schemes.

There has been much debate as to the value of this section of the Code. In a critical attack upon this section, Robert Nahstoll has stated: "[The portion of the new code] respecting group legal service arrangements, is unrealistic, inadequate, irresponsible, and unprofessional. It disserves both the public and bar."[50] The reason for this attack is first, the Bar's failure to supply leadership in the structuring of provisions for, and regulation of, group arrangements while leaving the whole scheme resting on the Court's interpretation, and second, the Code's failure to supply guidelines to regulate the group arrangements. There appears to be no strong support for the subsection. As Professor Sutton has stated:

> [T]he regulations placed in the Final Draft of the new Code are more in the nature of a lateral pass of the problem to the United States Supreme Court than an attempt to find solid grounds upon which to regulate group legal services. Yet any other course doubtless would have been unacceptable to the bar, and it would have been unwise to permit the entire Code to founder on the issue of group legal services.[51]

In considering other provisions of the Code, critical pitfalls are found that lend support to the argument that the Code does not in fact authorize group legal services. It can be seen that under EC 3-1 there is a prohibition against the unauthorized practice of law by a layman.[52] In many of the plans discussed laymen helped to gather information for the legal departments to help cut legal costs. This is not authorized under the Code. Further, under DR 3-101(A) "a

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[49] Wright, *The Code of Professional Responsibility: Its History and Objectives*, 24 ARK. L. REV. 1, 17 (1970).

[50] Nahstoll, *Limitations on Group Legal Services Arrangements Under the Code of Professional Responsibility, DR 2-103 (D)(5): Stale Wine in New Bottles*, 48 TEX. L. REV. 334, 350 (1970).

[51] Sutton, *Symposium—The American Bar Association Code of Professional Responsibility: An Introduction*, 48 TEX. L. REV. 255, 262 (1970).

[52] CODE Canon No. 3, EC 3-1.

lawyer shall not aid a non-lawyer in the unauthorized practice of law."[53] This would prevent lawyers from accepting positions with such groups that provide fact-finding committees. However, the concept of paraprofessional personnel may force a reconsideration of these provisions.

It is also found that in considering EC 5-23 it may be considered unethical to represent an individual while being paid from another source.[54] This would seem to be contrary to the holding in the *United Mine Workers*[55] case where the union paid the salary of the attorney.

It must also be noted that under EC 5-24 a lawyer is to guard against being controlled by the policies of a corporation with non-lawyer directors.[56] Here, once again, the ethical considerations do not seem to be in line with the recently decided case law.

After considering these particular sections it would seem that writers are entirely correct in asserting that DR 2-103 (D) (5) is not an effective authorization for "expanded" group legal service plans. The key assertion against the new Code's provisions on group legal service plans is still that the American Bar Association should not be content to allow the Supreme Court to set the standards from which the Code is later drafted. Since the rules seem merely to echo the narrow factual situations presented in the four court decisions, and not broad delineations of controlling First Amendment principles, lawyers may be afraid to test the limits of the new rules because they have no guidelines.[57] According to one commentator "[t]he evil . . . is that the Code restrictions unjustifiably limit the first amendment right to effective litigational association . . . to the relatively small number of organizations and types of litigations that are able to meet DR 2-103 (D) (5)'s requirements."[58]

CONCLUSION—THE FUTURE AT A GLANCE

It is evident to those involved with any of the aforementioned programs that without the complete support of all these programs

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[53] CODE Canon No. 3, DR 3-101(A).

[54] CODE Canon No. 5, EC 5-23.

[55] 389 U.S. 217 (1967).

[56] CODE Canon No. 5, EC 5-24.

[57] This raises many issues as to how the Court would rule on other fact situations, i.e., could a credit card holder be provided legal services by the issuing company; could a neighborhood group form a litigational association for the sole purpose of handling actions for the members?

[58] Comment, *The Bar as Trade Association: Economics, Ethics, and the First Amendment*, 5 HAR. CIV. RIGHTS-CIV. LIB. L. REV. 301, 367 (1970).

by lawyers, judges and the American Bar Association, the legal assistance that is so badly needed will simply not be provided. The legal profession is just now coming to the full realization that legal assistance is not being made available to all people. Although both legal aid societies and lawyer referral plans have been somewhat successful, that success has not even begun to reach the regions of the middle class where it is so badly needed.

In the previous section regarding the group legal service aspect of the Code it was shown how particular Code sections fail to give guidance, or sometimes even tend to dissuade attorney's from attempting any group legal service ventures. This apparent lack of support for group legal service plans seems odd in the face of several other commendable Code sections.

EC 1-1 states that "[a] basic tenet of the professional responsibility of lawyers is that every person in our society should have ready access to the independent professional services of a lawyer of integrity and competence."[59] Is this not exactly what group legal services are trying to provide? EC 2-1 lends even further support when it states that "[t]he need of members of the public for legal services is met only if they recognize their legal problems, appreciate the importance of seeking assistance and are able to obtain the services of acceptable legal counsel."[60] Many times group legal service plans are the only way a large segment of our population can obtain any legal assistance whatsoever.

EC 8-1 speaks of improving the legal system by participating "in proposing and supporting legislation and programs to improve the system, without regard to the general interests or desires of clients or former clients."[61] Group legal service programs are exactly what is needed today and in the future. And finally, EC 9-1 states that "[a] lawyer should promote public confidence in our system and in the legal profession."[62] How can there be confidence in a system that fails to provide equal opportunity to be represented?

Without a more liberalized *Code of Professional Responsibility* and without more foresight into the legal assistance required by the middle class, any future American Bar Association action may merely be a token. In the view of Francis Cady, "we must constantly

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[59] CODE Canon No. 1, EC 1-1.
[60] CODE Canon No. 2, EC 2-1.
[61] CODE Canon No. 8, EC 8-1.
[62] CODE Canon No. 9, EC 9-1.

reassess our capacity and willingness to serve the public competently and economically. If we fail to keep up with the times and fail to meet the legitimate needs and demands of the public, we shall no longer deserve the exclusive rights and privileges now accorded to our profession."[63]

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[63] Cadey, *The Future of Group Legal Services,* 55 A.B.A.J. 420, 425 (1969).