



Unlawful Solicitation in Nevada

BY MATTHEW HOFFMANN, ESQ.

Motor vehicle accidents in Nevada represent the largest area of personal injury practice within the state. With the rapid growth of the state and an adversary, tort-based system of recovery, the practice of personal injury law can be financially lucrative. As a result, there appear to be more personal injury firms in the state than ever before.

But when starting a personal injury practice, it is both tempting and easy to commit various ethical and legal violations to build a law practice quickly. The greatest example of this is the practice of “capping,” where a law firm pays non-lawyers in exchange for new client referrals. Examples of this practice, and its legal and ethical implications, will be discussed below.

NRS 7.045

In 2013, the Nevada Legislature adopted revisions to Chapter 7 of the Nevada Revised Statutes, governing “Attorneys and Counselors at Law.” Specifically, NRS 7.045, which governs the Unlawful Solicitation of Legal Business, was amended to provide a civil remedy for tort victims referred to attorneys at the scene of an accident.

Pursuant to NRS 7.045, “it shall be unlawful for a person, in exchange for compensation, to solicit a tort victim to employ, hire or retain any attorney at law ... [a]t the scene of a traffic accident that may result in a civil action.” *See* NRS 7.045(1)(a). The amended statute further states “[i]t is unlawful for a person to conspire with another person to commit an act which violates the provisions of subsection 1.” *See* NRS 7.045(2).

The civil remedy created by the amended NRS 7.045 states “[a] tort victim may void any contract, agreement or obligation that is made, obtained, procured or incurred in violation of this section. *See* NRS 7.045(4). In addition, “[a]ny person who violates any of the provisions of this section is guilty of a misdemeanor.” *See* NRS 7.045(5).

An arrangement that would lead to a violation of NRS 7.045 is not difficult to imagine. For example, let’s say a lawyer or law firm employee promises to pay a tow-truck driver a set amount of money in exchange for the tow-truck driver convincing accident victims at the scene of an accident to retain said law firm.

The tow-truck driver has a viable, legal reason to be at the scene of a crash, and they are uniquely situated to discover who is at fault for the collision and who are the victims. If this driver solicits the tort victim at the scene, they would be in violation of NRS 7.045(1)(a) because they have solicited a tort victim at the scene of a traffic accident to employ, hire or retain an attorney, and they are doing so in exchange for compensation. In this example, the tow-truck driver is guilty of a misdemeanor.

Furthermore, a lawyer or law firm paying a tow-truck driver in exchange for a referral is in violation of NRS 7.045(2), as they have “[conspired] with another person to commit an act which violates the provisions of subsection 1.” Those at the law firm who agreed to compensate the tow-truck driver in exchange for the referral of a tort victim are also guilty of a misdemeanor.

Where things become financially perilous for the law firm is the remedy contained in NRS 7.045(4). Pursuant to that subsection, the tort victim who retained the law firm has the right to void the contingency-fee agreement with the law firm. This is true whether the case has resolved or not, and the action of voiding a contract has legal significance. If void, the contract, in essence, never happened, thus eliminating traditional common law defenses such as accord and satisfaction or quantum meruit. Thus, the lawyer or law firm in this scenario would not only be out the money they paid for the referral, but the tort victim client could void the contract after the case resolves and force the law firm to pay back all of the attorney’s fees and costs collected in the case.

The actions of the law firm in this scenario also violate the Nevada Rules of Professional Conduct, specifically Rule 7.2(a) (forbidding the payment of anything of value to a person for recommending the lawyer’s services), Rule 7.3 (Communications with Prospective Clients), and Rule 8.4 (Misconduct). If the solicitation scheme involves subordinate lawyers and/or non-lawyers effectuating payments to third parties in exchange for referrals, and if non-lawyers are promised a percentage of the attorney’s fee recovered in exchange for producing new client referrals, Rule 5.4 (sharing legal fees with a nonlawyer), Rule 5.2 (Responsibilities of a Subordinate Lawyer), and Rule 5.3 (Responsibilities Regarding Nonlawyer Assistants) may also be implicated.

Furthermore, a lawyer or law firm who enters into a fee agreement with a client referred to that law firm as the result of a violation of NRS 7.045 has an ethical duty to inform the client of their right to void the contingency-fee agreement pursuant to Rule 1.5(a), which prohibits lawyers from collecting “an unreasonable fee.” NRS 7.045(4) gives a tort victim the ability to void the contingency fee agreement, so charging **any** fee would be “unreasonable” since the client has the legal right to void the entire agreement and pay no fee.

In short, the practice of paying nonlawyers to solicit tort victims at the scene of a crash is not only an ethical violation, it is a crime. And the civil penalty for engaging in this conduct is the voiding of the contingency-fee agreement, meaning the lawyer or law firm paying for such cases face the very real possibility they will not recover a fee, or may be sued and have to pay back the client any fees and costs recovered.

Because a limitations period is not specified in NRS 7.045, the statute of limitations to void a contingency fee

agreement that violates the statute is three years from the date of solicitation. See NRS 11.190(3)(a). There is no tolling provision available to the tort victims duped by these unethical and illegal referral schemes, most of whom have no idea of their legal right to void the agreement. Hopefully such a provision will be added to NRS 7.045 going forward, which would act as a further deterrent to lawyers and law firms engaged in these schemes.



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