

**KENTUCKY BAR ASSOCIATION**  
**Ethics Opinion KBA E-101**  
Issued: September 1974

***This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), especially Rules 7.01-7.50 and the Attorneys' Advertising Commission Regulations, before relying on this opinion.***

**Question:** May an attorney ethically participate in a legal advising system to be established by the student government of a university as a service to the students?

**Answer:** Qualified yes.

**References:** RCA 3.475; DR 2-103, 5-107

**OPINION**

The student government of a university in our state proposes to establish a legal advising system as a service to the students and to employ a practicing attorney on a fee basis to direct the program. The service would involve only consultation with students in need of legal advice. No preparation of legal documents or any litigation is contemplated, and in the event either were required or indicated the student would be referred to the lawyer referral service of the local Bar Association. Under no circumstances would the attorney employed by the service be called upon to do more than discuss available legal options and their possible consequences with any student who consulted him. Before the program is undertaken, the Ethics Committee has been asked to determine whether it would be ethically permissible. This inquiry involves a consideration of what has become known as "group legal services." In that connection two rules are particularly pertinent. RCA 3.475, adopted recently by the Court of Appeals, makes provision for the furnishing of legal services pursuant to group arrangements. It provides in part:

As used in this rule, a group means a professional association, trade association, labor union or other nonprofit organization or combination of persons, incorporated or otherwise, whose primary purposes and activities are other than the rendering of legal services. Legal services must be no substantial service rendered by the group but incidental thereto.

Any member of the association may furnish legal services to a member of a group, as heretofore defined, only at the request of such group if the arrangement under which the services are provided complies with the following requirements:

- (a) Permits any member of the group to engage legal services independently of the arrangement from any attorney of his choice;
- (b) The group, its agents or any member thereof does not interfere with or control the performance of the duties of the member of the association;
- (c) The group, its agents or any member thereof does not directly or indirectly derive a profit from or receive any part of the consideration paid to the member of the association for the rendering of legal services under the arrangement;
- (d) No unlicensed person engages in the practice of law under the arrangement;
- (e) The recommending, furnishing or paying for legal services to its members is incidental and reasonably related to the primary purposes of such organization;
- (f) All publicizing and soliciting activities concerning the arrangement are prohibited except by means of simple dignified announcements to the members of the group setting forth the purposes and activities of the group or the nature and extent of the legal services or both, without any identification of the member of the association rendering or to render the services except that the group may answer inquiries from members of the group as to the identity and address of the member of the association rendering or to render the services;
- (g) The member of the association representing a member of the group must charge a reasonable fee in charging fees to the group;

Closely related to this rule is DR 2-103D), which provides:

A lawyer shall not knowingly assist a person or organization that recommends, furnishes, or pays for legal services to promote the use of his services 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:

- (1) A legal aid office or public defender office:
  - (a) Operated or sponsored by a duly accredited law school.
  - (b) Operated or sponsored by a bona fide nonprofit community organization.
  - (c) Operated or sponsored by a governmental agency.
  - (d) Operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists.
- (2) A military legal assistance office.
- (3) A lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists.
- (4) A bar association representative of the general bar of the geographical area in which the association exists.
- (5) Any other nonprofit organization that recommends, furnishes, or pays for legal services to its members or beneficiaries, but only in those

instances and to 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 organization do not include the rendition of legal services.
- (b) The recommending, furnishing, or paying for legal services to its members is incidental and reasonably related to the primary purposes of such organization.
- (c) Such organization does not derive a financial benefit from the rendition of legal services by the lawyer.
- (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 that matter.

We have recently analyzed these rules at length, holding in KBA Opinion E-69 that the Compensation Fund of a District of the United Mine Workers of America might ethically engage a single attorney to provide representation to its members concerning workmen's compensation claims and to advise the members in regard to their federal black lung claims. In reaching that conclusion, we were careful to note the many restrictions which must be rigidly adhered to in the operation of the plan.

Here, the student government of a university would appear to fall within the definition of organizations eligible for group services. It also appears that there would be no effort to prevent use of attorneys outside of the arrangement. In fact, a student in need of anything beyond advice would be required to seek outside legal assistance. We assume there would be no interference in the performance of the attorney's duties and we are assured that the contemplated representation would be undertaken only by a licensed attorney and without profit of any kind to the association. Finally, furnishing an attorney to counsel with students in need of legal advice is incidental and reasonably related to the principal purposes of the student government. The Committee has accordingly concluded that the proposed arrangement may be undertaken if established and operated in strict accordance with the requirements of RCA 3.475 and DR 2-103(D). Several potentially troublesome areas deserve special mention at this point, however.

In addition to RCA 3.475(b), the provisions of DR 5-107(B) emphasize that a lawyer shall not permit a person paying him to render legal services for another to direct or regulate his professional judgment in rendering those services. Special care must be taken in operation of the arrangement to avoid even the suggestion of interference by the student government. Such interference would render the program unethical, and we would expect the attorney employed for the program to reject out of hand any attempt in this direction. The attorney-client relationship is too important to allow even the slightest infringement upon it.

The area of publicity requires particular attention. RCA 3.475(f) prohibits all publicizing and soliciting in connection with the arrangement except by means of simple dignified announcements to the members of the group. Permitted information would include the purposes and activities of the group and/or the nature and extent of the legal

services available. In such material there must be no identification of the attorney rendering the services, except that information as to the identity and address of the attorney may be furnished in response to individual inquiries from members of the group. Our traditional ban on advertising requires that there be no variation in compliance with this rule.

In the area of fees, it will be noted that RCA 3.475(g) requires the attorney involved to charge a reasonable fee for services performed in behalf of the group. This rule anticipates and requires that the compensation received by the attorney bear a reasonable relationship to the work done by him.

The attorney involved will also want to pay careful attention to the reports required by the provisions of RCA 3.475h) of any attorney performing services under a group arrangement.

If there is scrupulous adherence to these requirements, the type of service contemplated by this inquiry can be useful to the students for whom it is intended. Through counseling from a licensed attorney, a student can gain a clearer recognition of capable professional help in the event further assistance is required.

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***Note to Reader***

*This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.*