KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-239
Issued: March 1981

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 make a gift of routine legal services to a nonprofit organization to be used as door prizes or auctioned off?

Answer: No.

References: DR 2-101(A), EC 2-17, 2-18; ABA Informal Opinion 687, 1298; SCR 3.135; Bates v. State Bar of Arizona, 433 U.S. 350 (1977); Ohralik v. Ohio State Bar Assn, 436 U.S. 447 (1978); *In re* Primus, 436 U.S. 412 (1978); Kentucky Bar Assn v. Stuart, 568 S.W.2d 933 (1978)

OPINION

As a matter of professional courtesy, lawyers have given special consideration to members of the bar and their immediate families in fixing prices. For years lawyers have traditionally performed pro bono work and should be commended for this.

Although EC 2-17 indicates that adequate compensation is necessary in order to enable a lawyer to serve his client effectively and to preserve the integrity and independence of the profession there is interestingly no corresponding disciplinary rule. There can be no doubt though that a lawyer is free to give away legal services under certain situations.

There also can be no doubt that a lawyer from time to time may choose to reduce a fee based upon the lawyer's personal feelings (lawyers will frequently reduce the contingency fee when there is a large recovery, lawyers may choose to give policemen, firemen, or other groups a discount from the normal fee charged). There is nothing unethical or unprofessional about this.

It is laudable that lawyers become involved in non profit activities and perform valuable work for these groups. However, a lawyer cannot solicit cases and/or clients. See Ohralik v. Ohio State Bar Assn, 436 U.S. 447 (1978).

It is the feeling of the Ethics Committee that this fact situation is not with exception of Kentucky Bar Assn v. Stuart, 568 S.W.2d 933 (1978).

The Committee does not feel that this is an advertisement within SCR 3.135. Perhaps the major reason for not fitting within the Rule is that the advertisement may be self-laudatory or misleading. It is our feeling that at the time of the auction or the drawing it is a possibility (and perhaps a high probability) that this section would be violated by another person.

It also seems to the Committee that this is not an "advertisement by radio, television or in writing" as provided in SCR 3.135.

It is the feeling of the Committee that the reason for Bates was to allow commercial free speech, so as to adequately inform the lay public of legal services so that they could make an intelligent decision as to attorneys. The fact situation presented here does not provide for that informed decision but merely forces a particular person(s) to go to a particular lawyer.

The Committee also has problems with the concept of "routine" in this context. What may be routine to the legal profession may very well not be routine to the public!

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.