

Nebraska Ethics Advisory Opinion for Lawyers  
No. 92-4

AN ATTORNEY MAY NOT DONATE LEGAL SERVICES TO A  
NONPROFIT ORGANIZATION FOR SALE AT AN AUCTION  
FOR THE BENEFIT OF THE NONPROFIT ORGANIZATION.

QUESTION PRESENTED

May an attorney donate legal services to a nonprofit  
organization for sale at an auction for the benefit of the  
nonprofit organization?

CONCLUSION

It is the opinion of the Committee that a lawyer may not  
donate legal services to a nonprofit organization for an  
auction to benefit the nonprofit organization. Such an  
arrangement would result in the lawyer giving  
something of value to a third person for recommending  
the lawyer's services. Additionally, misleading  
statements may be made about the attorney in the  
course of the auction, and the arrangement may  
encourage the selection of the lawyer on an uninformed  
basis. The lawyer would be accepting a client before  
knowing the services needed by the client. The lawyer  
would be unable to determine in advance of the auction  
whether he or she was competent to perform the  
necessary services.

FACTS

An attorney asks if he may donate legal services to a  
nonprofit organization for sale at an auction for the  
benefit of the nonprofit organization. The attorney  
anticipates that he would offer for sale a "simple will" for  
which he normally would charge \$75.00. The highest  
bidder at the auction would receive the service and the  
bid amount would be paid by the bidder to the nonprofit  
organization.

APPLICABLE CODE PROVISIONS

EC 2-8 Selection of a lawyer by a layperson should be made on an informed basis. Advice and recommendation of third parties--relatives, friends, acquaintances, business associates or other lawyers--and disclosure of relevant information about the lawyer and his practice may be helpful. A layperson is best served if the recommendation is disinterested and informed. In order that the recommendation be disinterested, a lawyer should not seek to influence another to recommend his employment. A lawyer should not compensate another person for recommending him, for influencing a prospective client to employ him, or to encourage future recommendations. Advertisements and public communications, whether in law lists, telephone directories, newspapers, other forms of print media, television or radio, should be formulated to convey only information that is necessary to make an appropriate selection.

DR 2-101 Publicity.

(A) A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(1) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole nor materially misleading;

(2) Is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or

(3) Compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

DR 2-103 Recommendation of Professional Employment.

(A) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of

advertising or written communication permitted by these rules and may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.

DR 3-102 Dividing of Legal Fees with A Non-Lawyer.

A lawyer or law firm shall not share legal fees with a non-lawyer, except that:

(1) An agreement by a lawyer with his firm, partner, or associate may provide for the payment of money, over a reasonable period of time after his death, to his estate or to one or more specified persons.

(2) A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.

(3) A lawyer of law firm may include non-lawyer employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

#### OPINIONS FROM OTHER JURISDICTIONS

A number of jurisdictions have considered this issue. Those opinions concluding that such conduct is permissible may be summarized as follows:

Oregon Opinion 496, ABA/BNA Lawyers' Manual on Professional Conduct at 801:7113: Any problems in the attorney-client relationship that would preclude the lawyer from performing the services may be resolved by referring the case to another attorney.

Alabama Opinion 90-51, ABA/BNA Lawyers' Manual on Professional Conduct at 901:1069: Attorney may donate wills to a charitable non-profit organization for sale by silent auction if the lawyer complies with prohibition against solicitation of legal business and does not limit

the donation to "simple wills".

California Opinion 1982-65, ABA/BNA Lawyers' Manual on Professional Conduct at 801:1603: Such conduct does not constitute fee splitting with nonlawyers and is not paying another to recommend the lawyer's services. Lawyers should, however, take steps to ensure that any communication about the auction accurately describes the donated services and that they are not delivered in person or by telephone. The lawyer should also personally interview the recipient to determine if there are conflicts of interest and to determine if the lawyer is competent to render the requested services.

Philadelphia Opinion 80-35, ABA/BNA Lawyers' Manual on Professional Conduct at 801:7505: An attorney may donate an hour of professional service to a fund-raising auction conducted by a private school. Such conduct does not constitute a splitting of legal fees with a nonlawyer and does not violate the guidelines regarding publicity. The attorney should observe appropriate safeguards regarding the attorney-client relationship.

Opinions concluding that such conduct is prohibited may be summarized as follows:

New York Opinion 524, ABA/BNA Lawyers' Manual on Professional Conduct at 801:6101: A lawyer may not donate legal services to a charitable organization that will auction the services as the lawyer would be agreeing to accept the employment without first determining if the matter was beyond his or her competence. Such an arrangement would also require the lawyer to give something of value to a third party for recommending the lawyer's employment and would constitute an inappropriate means of publicizing the lawyer. In addition, an auction would confuse the intelligent selection of the attorney.

New York City Opinion 81-22, ABA/BNA Lawyers' Manual on Professional Conduct at 801:6321: The auctioning of legal services would make it impossible for the lawyer to exercise professional judgment as to whether the client should be accepted and whether the lawyer is

competent to handle the matter. The lawyer would be unable to determine in advance what services would be needed by the "highest bidder". The auctioning of legal services would also constitute giving something of value to a third party for recommending the lawyer's employment.

Monroe County (N.Y.) Opinion 1, ABA/BNA Lawyers' Manual on Professional Conduct at 801:6151: A lawyer may not donate legal services to a charitable organization that will auction the services to raise funds as the arrangement interferes with the lawyer's professional judgment in deciding to accept a client, confuses the intelligent selection of counsel and constitutes solicitation.

Kentucky Opinion E-239, ABA/BNA Lawyers' Manual on Professional Conduct at 801:3903: A lawyer may not donate legal services to a nonprofit organization which will use the services for auction or provide them as door prizes as misleading or laudatory statements might be made and the potential client would not have the opportunity to make an informed decision as to counsel.

Maryland Opinion 80-43, ABA/BNA Lawyers' Manual on Professional Conduct at 801:4303: Donating legal services to be auctioned comprises giving something of value for recommending the lawyer and is therefore prohibited.

## DISCUSSION

In [Opinion 87-2](#), the Nebraska State Bar Association Advisory Committee stated that a lawyer may participate in a for profit lawyer referral program where the lawyer does not give anything of value to the service for the recommendation, and the referral service complies with other ethics rules, such as those concerning advertising. The Committee determined that although lawyers participating in the service are required to charge clients reduced fees, such reduced fees did not constitute the giving of "anything of value" to a person for recommending a lawyer's services within the meaning of DR 2-103 (A). Rather, the Committee

stated the benefits go to the client.

In this case, unlike the situation presented in [Opinion 87-2](#), the attorney does not receive a fee for his services, but rather the fee for the attorney's services is paid directly to the charity. Although the client may pay a reduced fee, there is no guarantee of such as the fee for the services is determined by the bidding.

#### CONCLUSION

It is the opinion of the Committee that a lawyer may not donate legal services to a nonprofit organization for an auction to benefit the nonprofit organization. Such an arrangement would result in the lawyer giving something of value to a third person for recommending the lawyer's services. Additionally, misleading statements may be made about the attorney in the course of the auction, and the arrangement may encourage the selection of the lawyer on an uninformed basis. The lawyer would be accepting a client before knowing the services needed by the client. The lawyer would be unable to determine in advance of the auction whether he or she was competent to perform the necessary services.