

Nebraska Ethics Advisory Opinion for Lawyers  
No. 81-13

IT IS IMPROPER FOR AN ATTORNEY IN PRIVATE PRACTICE TO DONATE HIS OR HER LEGAL SERVICES TO A PAROCHIAL SCHOOL BUILDING FUND WHERE THE SERVICE WOULD BE MADE KNOWN TO SCHOOL FAMILIES THROUGH THE SCHOOL NEWSLETTER AND ALL OF THE FEES GENERATED WOULD BE CONTRIBUTED TO THE BUILDING FUND EXCEPT FOR REASONABLE EXPENSES INCURRED BY THE ATTORNEY.

QUESTION PRESENTED

May an attorney in private practice donate his or her legal services to a parochial school building fund where the service would be made known only via the school newsletter and all fees generated would be donated to the building fund except for normal expenses incurred by the attorney.

DISCUSSION

DR 2-103 (B) provides:

(B) A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client, or as a reward for having made a recommendation resulting in his employment by a client, except that he may pay the usual and reasonable fees or dues charged by any of the organization listed in DR 2-103 (D).

DR 2-103 (C) provides in pertinent part:

(C) A lawyer shall not request a person or organization to recommend or promote the use of his services or those of his partner or associate, or any other lawyer affiliated with him or his firm, as a private practitioner,

except as authorized in DR 2-101, and  
except that

. . . .

(2) He may cooperate with the legal service activities of any of the offices or organizations enumerated in DR 2-103 (D) (1) through (4) and may perform legal services for those to whom he was recommended by it to do such work if:

(a) The person to whom the recommendation is made is a member or beneficiary of such office or organization; and

(b) The lawyer remains free to exercise his independent professional judgment on behalf of his client.

The American Bar Association's Committee on Ethics and Professional Responsibility Informal Opinion 1238, which by refer is attached and made a part hereof, deals with a factual setting closely resembling the present case.

This Committee is in agreement with A.B.A. Informal Opinion 1288 in that the proposed conduct would be in violation of DR 2-103 (B) and (C), as the lawyer, who was recommended or promoted by the church would in turn contribute the fee to the church. The proposed arrangement also may interfere with the lawyer's independent professional judgment on behalf of the client, particularly if the client is contemplating a bequest to the church or school. DR 5-107 (B) provided below, prohibits a lawyer from placing himself in this position.

DR 5-107 (B) provides:

(B) A lawyer shall not permit a person who recommends, employs, or pays him to render legal services for another to direct or

regulate his professional judgment in rendering such legal services.

The Committee hereby adopts Informal Opinion 1288 as it relates to an attorney's preparation of wills for church members where the fee generated would be contributed to the parochial school building fund. The Committee further is of the opinion that an attorney may not ethically provide any legal service under the proposed plan as DR 2-103 would prohibit such conduct.

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