



ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

Appointed by the Supreme Court of New Jersey

ACPE OPINION 737

**Donating Legal Services to Charity
Fundraisers; Superseding Opinion 319**

After receiving several calls on the attorney ethics research assistance hotline from lawyers asking whether they may donate specified legal services, such as a simple will, to a charity silent auction fundraiser, the Advisory Committee on Professional Ethics decided to revisit prior Opinion 319 (September 25, 1975). Opinion 319 prohibits lawyers from donating legal services for a charity fundraiser and was issued at a point in time when attorney advertising was flatly prohibited. The Committee hereby finds that Opinion 319 is no longer good law and issues this superseding Opinion. Lawyers may, consistent with the Rules of Professional Conduct, donate specified legal services for a charity fundraiser, provided that lawyers clearly describe the nature of the services to be rendered and do not misrepresent the value of such services.

Opinion 319 states (in its entirety):

Is it proper for an attorney to donate professional time, or a particular legal service, to a charitable organization to enable that charity to auction such services in a fundraising?

Under DR 2-103, we believe that this arrangement puts the charity in the position of recommending that attorney and then being remunerated by him for the introduction. Where the donated time is nonlegal, e.g., sidewalk sketch or photo at a street fair, there is no ethical concern.

Accordingly, this Committee is of the opinion that it is improper for an attorney to donate legal services to a charity for fundraising by the auction of such services.

Opinion 319 construed the Disciplinary Rules, which were supplanted by the Model Rules of Professional Conduct in 1984. Former Disciplinary Rule 2-103 provided:

- (A) A lawyer shall not recommend employment, as a private practitioner, of himself, his partner, or associate to a non-lawyer who has not sought his advice regarding employment of a lawyer.
- (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 organizations listed in DR 2-103(D).
- (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

The current equivalent of Disciplinary Rule 2-103 is set forth in Rules of Professional Conduct 7.2(c) and 7.3(d). Rule of Professional Conduct 7.2(c) provides that “[a] lawyer shall not give anything of value to a person for recommending the lawyer’s services” Rule of Professional Conduct 7.3(d) provides that “[a] lawyer shall not compensate or give anything of value to a person or organization to recommend or secure the lawyer’s employment by a client,

or as a reward for having made a recommendation resulting in the lawyer’s employment by the client”

The Committee, in Opinion 319, decided that when a lawyer offers to donate specified legal services, such as a simple will, to a charity for a silent auction or similar fundraising event, the charity is considered to be “recommending” the lawyer to the silent auction bidder. Further, the Opinion states that the lawyer is paying the charity for introducing the client to the lawyer.

A lawyer is offering something of value – specified legal services – as a donation to the charity for the fundraising auction. The question that the Committee revisits is whether a charity is considered to be “recommending” the lawyer when the charity presents the lawyer’s donation of specified legal services as an item to be auctioned at a fundraising event.

The Committee recognizes that most bidders at charity silent auctions understand that the specified services have been donated to the charity without any stringent vetting by the charity as to the quality of the services that are offered. Bidders at charity silent auctions would not necessarily think that the charity is “endorsing” or “recommending” the lawyer who has donated legal services. Rather, like other businesses donating services, such as massages, haircuts, or lawn care, the bidders would understand that the donor seeks to support the charity’s mission and to market the donor’s business in an effort to find new customers or clients. The charity does not endorse the lawyer; it merely offers these donated services, along with others, at their fundraising event. There is no violation of the Rules of Professional Conduct.

The Committee notes, however, that lawyers who donate legal services to charities for fundraising events should clearly specify the nature of the services to be rendered. RPC 1.4(c) (lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); RPC 7.1(a)(4) (permissible statements

regarding the legal fee). Many legal services can be offered for a reasonable fixed fee. The lawyer would need to specifically describe the services, and disclose all relevant variables and considerations, so that the offer of services would not be misunderstood or be deceptive. Further, lawyers may not misrepresent the value of such services.