

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 2002-11

Issued August 9, 2002

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

SYLLABUS: It is improper under DR 2-103(D) and DR 5-107(B) of the Ohio Code of Professional Responsibility for a lawyer to participate in a group legal services plan paid for by a church to provide estate planning services at no cost to church members, but which contains a provision that if a church member needs a self-trusteed revocable trust, the church will bear the cost only if the lawyer prepares the trust with a provision that upon the member's death the church will receive a minimum of \$20,000 or 20% of the distributable trust, whichever amount is greater.

OPINION: This opinion addresses a question regarding a lawyer's participation in a group legal services plan.

Is it proper for a lawyer to participate in a group legal services plan paid for by a church to provide estate planning services at no cost to church members, but which contains a provision that if a church member needs a self-trusteed revocable trust, the church bears the cost only if the lawyer prepares the trust with a provision that upon the member's death the church will receive a minimum of \$20,000 or 20% of the distributable trust, whichever amount is greater?

Under the facts presented, a non-profit religious organization [herein referred to as a church] wishes to sponsor a group legal services plan to provide estate planning services to its church members. Church members interested in estate planning services would contact the planned giving department of the church. The planned giving department would refer the church member to a law firm for consultation. The law firm would prepare the necessary and appropriate estate documents for the church members. The church would pay the law firm its standard hourly rates for the legal services. The church members would receive the estate planning legal services at no cost, with one exception. The exception is that for a church member to receive a self-trusteed revocable trust at no cost, the church's group legal services plan requires that the trust contain a provision that upon the church member's death, the church will receive a minimum amount of \$20,000 or 20% of the distributable trust, whichever amount is greater. In the event that the church member does not want to bequeath such amount to the church, the church member would bear the cost for preparing the trust. All monies received through bequests by church members are used in furtherance of the church's religious purpose.

The Ohio Code of Professional Responsibility encourages lawyers' participation in *qualified legal assistance organizations* as a means by which the legal profession makes high quality legal services available to all.

EC 2-32 As a party [sic] of the legal profession's commitment to the principle that high quality legal services should be available to all, attorneys are encouraged to cooperate with *qualified legal assistance organizations* providing prepaid legal services. Such participation should at all times be in accordance with the basic tenets of the profession: independence, integrity, competence and devotion to the interests of individual clients. An attorney so participating should make certain that his relationship with a qualified legal assistance organization in no way interferes with his independent, professional representation of the interests of the individual client. An attorney should avoid situations in which officials of the organization who are not lawyers attempt to direct attorneys concerning the manner in which legal services are performed for individual members, and should also avoid situations in which considerations of economy are given undue weight in determining the attorneys employed by an organization or the legal services to be performed for the member or beneficiary rather than competence and quality of service. An attorney interested in maintaining the historic traditions of the profession and preserving the function of a lawyer as a trusted and independent advisor to individual members of society should carefully assess such factors when accepting employment by, or otherwise participating in, a particular qualified legal assistance organization, and while so participating should adhere to the highest professional standards of effort and competence.

A *qualified legal assistance organization* is defined as "an office or organization of one of the four types listed in DR 2-103(D)(1)-(4), inclusive that meets all the requirements thereof." Definitions, Ohio Code of Professional Conduct. The four types of qualified legal assistance organizations listed in DR 2-103(D)(1)-(4) are a legal aid or public defender office; a military assistance office; a lawyer referral service; and a bona fide organization that recommends, furnishes, or pays for legal services to its members or beneficiaries.

A church operating a group legal services plan for its members is an example of a qualified legal assistance organization referred to in DR 2-104(D)(4) as a bona fide organization. A lawyer is permitted to participate with a group legal services plan of a bona fide organization, such as a church, if the requirements of DR 2-103(D)(4)(a) through (h) are met and if there is no interference with the exercise of independent professional judgment on behalf of the lawyer's client.

DR 2-103 (D) A lawyer shall not knowingly assist a person or organization that furnishes or pays for legal services to others to promote

the use of the lawyer's services or those of the lawyer's partner or associate or any other lawyer affiliated with the lawyer or the lawyer's firm except as permitted in DR 2-101(B). However, this does not prohibit a lawyer or the lawyer's partner or associate or any other lawyer affiliated with the lawyer or the lawyer's firm from being recommended, employed, or paid by, or cooperating with, assisting, and providing legal services for, one of the following offices or organizations that promote the use of the lawyer's services or those of the lawyer's partner or associate or any other lawyer affiliated with the lawyer or the lawyer's firm **if there is no interference with the exercise of independent professional judgment on behalf of the lawyer's client:** [Emphasis added].

(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 non-profit community organization.
- (c) Operated or sponsored by a governmental agency.
- (d) Operated, sponsored, or approved by a bar association.

(2) A military legal assistance office.

(3) A lawyer referral service that complies with division (C) of this rule.

(4) Any bona fide organization that recommends, furnishes, or pays for legal services to its members or beneficiaries provided all of the following conditions are satisfied:

- (a) The organization, including any affiliate, is organized and operated so that no profit is derived by it from the rendition of legal services by lawyers, and that, if the organization is organized for profit, the legal services are not rendered by lawyers employed, directed, supervised, or selected by it except in connection with matters where the organization bears ultimate liability of its member or beneficiary.
- (b) Neither the lawyer, the lawyer's partner, associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, nor any non-lawyer, shall have initiated or promoted the organization for the primary purpose of providing

financial or other benefit to the lawyer, partner, associate, or affiliated lawyer.

(c) The organization is not operated for the purpose of procuring legal work or financial benefit for any lawyer as a private practitioner outside of the legal services program of the organization.

(d) The member or beneficiary to whom the legal services are furnished, and not the organization, is recognized as the client of the lawyer in the matter.

(e) Any member or beneficiary who is entitled to have legal services furnished or paid for by the organization, if such member or beneficiary so desires, may select counsel other than that furnished, selected or approved by the organization; provided, however, that the organization shall be under no obligation to pay for the legal services furnished by the attorney selected by the beneficiary unless the terms of the legal services plan specifically provide for payment.

Every legal services plan shall provide that any member or beneficiary may assert a claim that representation by counsel furnished, selected, or approved by the organization would be unethical, improper, or inadequate under the circumstances of the matter involved. The plan shall provide for adjudication of a claim under division (D)(4)(c) of this rule and appropriate relief through substitution of counsel or providing that the beneficiary may select counsel and the organization shall pay for the legal services rendered by selected counsel to the extent that such services are covered under the plan and in an amount equal to the cost that would have been incurred by the plan if the plan had furnished designated counsel.

(f) The lawyer does not know or have cause to know that the organization is in violation of applicable laws, rules of court, and other legal requirements that govern its legal service operations.

(g) The organization has filed with the Supreme Court of Ohio, on or before the first day of January of each year, a report with respect to its legal service plan, if any, showing its terms, its schedule of benefits, its subscription charges, agreements with counsel, and financial results of its legal

service activities or, if it has failed to do so, the lawyer does not know or have cause to know of the failure.

DR 5-107(B) requires that a lawyer avoid influence by someone other than the client. This rule buttresses the requirement of DR 2-103(D) that in order to participate with a group legal services plan there be no interference with the exercise of independent professional judgment on behalf of the lawyer's client:

DR 5-107(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 proposed church sponsored group legal services plan contains a provision that improperly interferes with the exercise of independent professional judgment on behalf of the lawyer's client and thus violates DR 2-103(D) and DR 5-107(B). The church bears the cost of the lawyer's preparation of a self-trusted revocable trust at no cost to the member only if the lawyer drafts the trust with a provision that upon the church member's death the church will receive a minimum amount of \$20,000 or 20% of the distributable trust, whichever amount is greater. In the event that the church member does not want to bequeath such amount to the church, the church member must bear the cost for the lawyer's preparation of the trust.

The objectionable provision—trust preparation at no cost to the group legal services plan member if the lawyer drafts a trust for the member with a provision that upon the member's death the church will receive a minimum amount of \$20,000 or 20% of the distributable trust, whichever amount is greater—places the participating lawyer in a conflict. The more bequests made to the church, the more satisfied the church is with the participating lawyer's legal services. The more satisfied the church is with the lawyer's services, the more likely it is to refer plan members to that particular lawyer. The more the lawyer is rewarded by having plan members referred to him or her, the more likely it is that the lawyer will encourage inclusion of the trust provision that benefits the church. The provision jeopardizes the lawyer's independent professional judgment in providing legal services that meet the client's needs because the group legal services plan requires that the church's needs be given consideration in every client matter involving a self-trusted revocable trust.

Further, DR 2-103(D)(4)(a) requires that the organization is organized and operated so that no profit is derived from the rendition of group legal services by the lawyer. As proposed, the organization is operating its group legal service plan to receive large sums of money (twenty thousand dollars or twenty percent of the distributable trust whichever is greater) from the rendition of group legal services by the plan lawyer. The organization is offering the lawyer's preparation of a self-trusted revocable trust as a no cost plan benefit only if it receives a windfall from the provision of the legal services. While this may not violate the letter of DR 2-103(D)(4)(a), for it is not "profit" in the sense that the organization has non-profit status and the money from the bequest would be used only in furtherance of religious purposes, it violates the spirit of the rule. DR 2-

103(D)(4)(a) is a rule that is concerned with “profits” by a sponsoring organization having an impact on the attorney-client relationship. As explained in the ABA annotations to the DR 2-103(D)(4)(a) “[t]his provision is premised upon the connection between the realization of profit by a lay organization from the rendition of legal services by a lawyer and the potential for interference with the independent exercise of the lawyer’s professional judgment to enhance that profit.” American Bar Foundation, *Annotated Code of Professional Responsibility* 76 (1979).

In conclusion, this Board advises as follows. It is improper under DR 2-103(D) and DR 5-107(B) of the Ohio Code of Professional Responsibility for a lawyer to participate in a group legal services plan paid for by a church to provide estate planning services at no cost to church members, but which contains a provision that if a church member needs a self-trusted revocable trust, the church will bear the cost only if the lawyer prepares the trust with a provision that upon the member’s death the church will receive a minimum of \$20,000 or 20% of the distributable trust, whichever amount is greater.

Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Code of Professional Responsibility, the Code of Judicial Conduct, and the Attorney’s Oath of Office.