



Ohio Board of Professional Conduct

OPINION 2019-7

Issued August 2, 2019

Withdraws Adv. Op. 2002-5

Donation of Legal Services to be Auctioned for Charity

SYLLABUS: A lawyer is prohibited from donating legal services to be auctioned or raffled at a fundraiser for a charitable organization. A lawyer's donation of legal services to be auctioned or raffled for a charitable organization is giving a thing of value to another for recommending the lawyer's services. A lawyer's agreement with a charitable organization to provide legal services to an unknown donor may improperly limit the exercise of the lawyer's independent professional judgment as to whom to accept as a client and what services to provide. It is misleading for a lawyer to donate legal services that he or she may not be able to provide due to conflicts of interest, the complexity of the legal matter, and the lawyer's relative skill and competence.

This nonbinding advisory opinion is issued by the Ohio Board of Professional Conduct in response to a prospective or hypothetical question regarding the application of ethics rules applicable to Ohio judges and lawyers. The Ohio Board of Professional Conduct is solely responsible for the content of this advisory opinion, and the advice contained in this opinion does not reflect and should not be construed as reflecting the opinion of the Supreme Court of Ohio. Questions regarding this advisory opinion should be directed to the staff of the Ohio Board of Professional Conduct.



Ohio Board of Professional Conduct

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APPLICABLE RULES: Prof.Cond.R. 1.1, 1.7, 1.9, 5.4, 7.1, 7.2, 7.3

QUESTION(S) PRESENTED: Is it proper for a lawyer to donate legal services to be auctioned or raffled at a fundraiser for a charitable organization?

OPINION: The donation of legal services through a charitable organization raises multiple ethical issues for the lawyer.¹

¹ Notwithstanding the general prohibition against the donation of legal services in this manner, the conduct does not implicate a division of fees with a charitable organization. The lawyer is not charging or collecting a fee for legal services. Individuals who bid on items or purchase tickets for a prize drawing are donating to a charitable organization, not paying for the subject of their bid or prize (legal services).

Giving a thing of value for recommending a lawyer's services

With a few enumerated exceptions that do not apply here, Prof.Cond.R. 7.2(b) provides that a lawyer shall not give anything of value to a person for recommending the lawyer's services. A lawyer's donation of legal services to be used as a charity auction or raffle prize is a thing of value because the charitable organization receives a monetary donation as a direct result of the donation of the lawyer's services. As part of a typical charity auction or raffle, the charitable organization may be perceived as endorsing the lawyer's credentials, abilities, competence, character or other professional qualities in some manner. When the charitable organization includes information about the lawyer in the materials promoting the event, in materials displayed at the event, or information provided orally by a host, the charitable organization is in effect recommending the lawyer.

Improper limitation on the exercise of a lawyer's independent professional judgment

A lawyer shall not permit a person who recommends the lawyer to another to direct or regulate the lawyer's professional judgement in rendering such legal services. Prof.Cond.R. 5.4(c). By offering a lawyer's legal services as an auction or prize item, a charitable organization could be perceived as both advertising and recommending the lawyer's services. When a lawyer makes a decision to donate his or her services, the identity of the successful silent auction bidder or prize winner and the nature and extent of the winner's legal needs are unknown. By agreeing with a charitable organization to provide a legal service, especially if it is a specific legal service, prior to the creation of the attorney-client relationship with the donor, the charitable organization becomes involved in directing and regulating the limits of the services the lawyer will provide. Further, by agreeing in advance to provide a legal service to an unknown individual with unknown legal needs, a lawyer improperly places limitations on the exercise of his or her independent professional judgment as to whom he or she will accept as a client and what legal services will be provided.

It is misleading to donate legal services the lawyer may or may not be able to provide

A lawyer cannot provide donated legal services to the charitable donor for a variety of reasons. Most importantly, a lawyer shall not make or use a false, misleading, or nonverifiable communication about the lawyer or the lawyer's services. Prof.Cond.R. 7.1. A donation of legal services to a charitable organization can be misleading if the donor does not need the offered services, needs representation different from the donated services, or needs additional legal services than the lawyer can offer. An unsophisticated

donor may not fully realize the nature and scope of his or her legal needs, yet have an expectation that the lawyer who has donated his or her services will be able to meet the individual's needs. The donor's legal needs may be complex and the lawyer may be unable to competently provide the legal services the individual thinks he or she is entitled to receive. Prof.Cond.R. 1.1. If the lawyer suggests other legal services may be required at an additional fee, the donor may feel misled or that the lawyer took advantage of him or her. Furthermore, the lawyer may be prohibited from representing the individual donor due to a nonwaivable conflict of interest. Prof.Cond.R. 1.7 and 1.9. In recent years a few other states have favored the practice of allowing donation of legal services for charitable fundraising so long as limitations are put into place in an attempt to address the ethical concerns. However, in the Board's view, any potential disclaimer provided in connection with the fundraising event that attempts to address all of the lawyer's ethical limitations, in order to inform potential donors and avoid the creation of unjustified expectations, has the likelihood of falling short due to the nuances involved. Consequently, the Board advises for the aforementioned reasons it is misleading for a lawyer to donate legal services that he or she may not be able to provide.

CONCLUSION: While the Board appreciates the benefits which may result from the lawyer's donation of legal services to both the community served by the charitable organization and the individual donor, the Board continues to believe there are more appropriate avenues for lawyers to provide those services such as providing pro bono services directly or volunteering at a legal aid clinic. A lawyer's donation of legal services to be auctioned or raffled at a fundraiser is giving a thing of value for recommending the lawyer's services. A lawyer's agreement with a charitable organization to provide legal services to an unknown recipient may improperly limit the exercise of the lawyer's independent professional judgment as to whom to accept as clients and what services to provide. It is misleading for a lawyer to donate legal services that he or she may not be able to provide. Thus, the Board concludes that participation by a lawyer in the donation of legal services for a charity auction or raffle is not permitted under the Rules of Professional Conduct.