

**STATE BAR OF NEVADA
STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY**

**Formal Opinion No. 5
June 16, 1987**

QUESTION - May an attorney, in conjunction with fund-raising efforts of a church of which the attorney is a member, mail a letter to all church members and sponsors informing them that he will waive one-half of his normal fee for preparation of wills and trusts, if the client will agree to donate the one-half saved to the church?

ANSWER - No.

AUTHORITIES RELIED ON

Nev. Rev. Stat. § 7.045 (1985)

Nevada Rules of Professional Conduct (Supreme Court Rules) 167, 188, 195, 196, 197 (1986)

DISCUSSION

The question posed raises a number of ethical considerations. The proposed action would clearly violate certain of the Nevada Rules of Professional Conduct, and its implementation would create the clear and present danger of the violation of others. For reasons hereinafter discussed, it is the opinion of the Committee that the question must be answered in the negative.

With certain exceptions not here relevant, Nevada Supreme Court Rule 188 provides that "[a] lawyer or law firm shall not share legal fees with a nonlawyer." Supreme Court Rule 188(1) (1986) [hereinafter SCR].

The proposed action would be directly contrary to this rule. Similar plans have been considered in other jurisdictions and found to constitute an impermissible division of fees with a nonlawyer, notwithstanding the fact that the contribution to the church or charity is made by the client directly and not by the attorney. Arizona State Bar Comm. on Rules of Professional Conduct, Op. 79-15 (June 6, 1979); Iowa State Bar Ass'n Comm. on Professional Ethics and Conduct, Op. 84-7 (Jan. 18, 1985).

It is, therefore, the opinion of the Committee that any arrangement whereby an attorney agrees to perform specified legal services for the members of an organization upon the express understanding that all or any specified portion of the fee so earned will be contributed to the organization, directly by the client or by the attorney after receipt from the client, constitutes fee splitting in violation of SCR 188.

SCR 188 dispositively answers the inquiry presented to the Committee. Three additional problems are noted in passing, however. First, while SCR 196 and 197 permit advertising and certain limited types of solicitation, both rules are subject to the strictures of SCR 195, which provides:

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 not materially misleading . . .

Although the Committee has not found any opinions from other jurisdictions considering a proposal identical to the one here involved, the problem presented is the same as in the case of discounted fees. That problem has been stated as follows:

The principal concern with offering a discount from customary fees is the potential that the offer may be misleading in violation of [the Rule]. If the lawyer has customary fees for various services that are readily ascertainable, then it is permissible to offer to discount them. The difficulty is in determining what is a "customary fee."

New York State Bar Ass'n Comm. on Professional Ethics, Op 563 (Oct. 1, 1984) (emphasis added).

The question posed to the Committee here involves the "normal fee for preparation of wills and trusts." The range of fees for such services can be enormous - from less than \$100 for a simple will to thousands of dollars for a complex trust. Absent a standard by which objectively to ascertain the "normal" or "customary" fee for such services, problems could arise under SCR 195. See Nassau County (New York) Bar Ass'n Comm. on Professional Ethics Comm., 83-2 (Feb 23, 1983) Oregon State Bar Legal Ethics Comm., Op. 448 (July 1980.)

The second problem is that in the event any client participating in the program described in the inquiry desires to name the church as devisee or legatee under his will or as beneficiary under any trust, potential violations of SCR 157 (conflict of interest) and SCR 67 (duty to exercise independent professional judgment) immediately arise. See ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1288 (June 17, 1974); Montana State Bar Ethics Comm., Op. 26 (March. 1982); New York County Lawyers' Ass'n Comm. on Professional Ethics, Op. 656 (Sept. 23, 1980).

Finally, if the church, directly or indirectly, becomes involved in soliciting its members to participate in the program, it would appear that such activity by the church would be unlawful. Nev. Rev. Stat. § 7.045 (1985) (unlawful or nonlawyers to solicit legal fees on behalf of lawyers).

CONCLUSION

An attorney may not, in conjunction with fund-raising efforts of a church of which the attorney is a member, mail a letter to all church members and sponsors informing them that the attorney will waive one-half of his normal fee for preparation of wills and trusts, if the client will agree to donate the one-half saved to the church.

This opinion is issued by the Standing Committee on Ethics and Professional Responsibility of the State Bar of Nevada, pursuant to SCR 225. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, its Board of Governors, any persons or tribunals charged with regulatory responsibilities, or any member of the State Bar.