

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-36A
Issued: April 1970

Question: Where a law firm is retained by a lending institution as general counsel at an annual fee, may the firm then contract with the lending institution to render legal services to customers of said institution at a schedule of fees lower than a minimum fee schedule adopted by the Bar Association?

Answer: No.

OPINION

No lawyer should ever consider a minimum fee schedule an ironbound rule to be strictly followed at all costs and in all cases. It must be remembered that such schedules are prepared for the purpose of advising the public of the reasonableness of the cost of legal services as well as providing the attorney a yardstick by which he may measure a reasonable fee for the service rendered.

With this in mind the attorney should further consider the time and difficulty involved, the character and nature of the employment, the amount involved, the customary charge for such service and the contingency or certainty of compensation without giving undue emphasis to any one consideration. The attorney should be aware of the fact, and he should so advise his clients, that those charged with the duty of preparing and adopting a schedule of minimum fees have carefully taken all the above requirements into account in presenting a certain fee for a certain type of service.

In addition it is universally accepted that a lower fee may be charged in some specific case, or perhaps, in another specific case no charge at all, but as a general rule the schedule must be observed. It must be established that no attorney may consistently and persistently charge fees less than those recommended by an adopted fee schedule or contract through a lay agency to do so.

The evils attendant upon such conduct enables the client to engage in unfair competition; it enables a lay agency to exploit the lawyers' services for a pecuniary advantage to itself; it smacks of a lay agency willing to offer the public "cut rate" costs; and it enables a lending institution to advertise competitive, "cut rate" services. It necessarily follows that such practice then amounts to solicitation for legal services; and brands the lawyer as a "cut rate" practitioner. Such conduct is calculated to bring the practice of law into disrepute and any attorney entering into such an arrangement or some form of conspiracy tending to establish such, should be subject to severe discipline. It necessarily follows that the question should be answered "no."

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the

Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). Note that the Rule provides: "Both informal and formal opinions shall be advisory only; however, no attorney shall be disciplined for any professional act on his part performed in compliance with an opinion furnished to him on his petition, provided his petition clearly, fairly, accurately and completely states his contemplated professional act."