

**KENTUCKY BAR ASSOCIATION**  
**Ethics Opinion KBA E-156**  
Issued: September 1976

**Question:** May a lawyer properly furnish legal services to a member of a prepaid legal services plan administered by a credit union for the benefit of its members, where the plan pays the lawyer for his services and the plan recommends his employment to, but does not require his employment by, plan participants?

**Answer:** No.

**References:** RAP 3.476(a)

**OPINION**

A lawyer inquires into the propriety of a prepaid legal service plan for members of a credit union in which "the administrator would randomly refer the participating member to a panel attorney upon request by the participating member. The participating member would not be restricted to the use of panel attorneys but could use any attorney of his or her choosing and the trust would pay the non-panel attorney the same fee it would have paid the panel attorney under the panel attorney's contract." Such a panel is unacceptable, as is the tacit recommendation of certain members of the Bar, whether or not such members of the Bar are on the panel established by the trust.

Although prepaid legal service plans, if properly structured, are permissible, they must meet the requirements of RAP 3.476. In terms of this application particular reference must be made to RAP 3.476(a) which mandates:

A member of the Association may furnish legal services to a member of a prepaid legal services plan, as heretofore defined, provided that the plan complies with the following requirements:

(a) The plan permits the member of the plan to use the services of any member of the Association of his choice; and, no agent, servant or employee of the plan or the plan itself shall recommend to a member of the plan the services of any particular member or members of the Association;

Clearly such a panel as described in this application, or the recommendation of any particular attorney or group of attorneys, in any manner or form, tacit or specific, by the plan or trust, or anyone in the service or employment of the plan or trust, is specifically prohibited. Nor, in the opinion of the Committee, is this plan saved by the

provision that the members of the plan are not restricted to the use of panel attorneys. The fact that a panel is provided and a recommendation, however subtle, is made, is sufficient to defeat the prepaid legal services plan as outlined.

To sufficiently comply with the provisions of RAP 3.476, a member of the plan must have completely free and unfettered ability to use and employ any member of the Bar of his choice. Any solicitation, in any form, by the plan or trust, of particular members of the Bar is unacceptable.

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***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."*