

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-358
Issued: March 1993

Questions : May a lawyer ethically do any of the following, either directly, or indirectly through the Treasurer of a Labor Union's "Designated Counsel Group" (to which Designated Counsel Group an annual contribution must be paid)?

Specifically, may the lawyer:

1. Accept the role of "Designated Counsel?"
2. When invited, attend a regional or local meeting of union officials?
3. When invited, attend regional or local meetings of union members and discuss with those members their rights as defined by the law (labor laws, civil rights laws, FELA, and so forth)?
4. Provide a "hospitality room" at a union function attended by union officials?
5. Pay for a dinner which will be attended by either union officials, union members, or both?
6. Provide lodging at any union related function for union representatives or union members?
7. Donate office equipment of any type to a union.
8. Pay law firm monies into the "Designated Counsel Group," as contributions, for the purpose of doing any of the above?
9. As a member of a group of law firms, jointly expend monies to fund activities which are attended either by union officials, union members, or both?

Answers 1-3: Yes.

Answers 4- 9: Qualified no, and referred to the ABA Standing Committee.

References: Kentucky Rule of Professional Conduct 7.20(a); ABA Model Rule 7.2(c); ABA Model Code 2-103(B); Brotherhood of Railroad Trainmen v. Virginia State Bar, 377 U.S. 1 (1964); United Transportation Union v. State Bar of Michigan, 401 U.S. 576 (1971); KBA E-330 (1988); Lawline v. American Bar Association, 956 F.2d 1378 (7th Cir. 1992).

OPINION

The activities alluded to in Questions 1, 2, and 3, are permissible under the Kentucky Rules of Professional Conduct. See also Brotherhood of Railroad Trainman v. Virginia State Bar, 377 U.S. 1 (1964); United Transportation Union v. State Bar of Michigan, 401 U.S. 576 (1971) (similar plans and activities protected under First and Fourteenth Amendments although they

resulted in “channeling all, or substantially all, the workers claims to counsel selected or designated by union).

The practices alluded to in Questions 4 through 9 are problematic. Kentucky Rule 7.20(2) (formerly Kentucky Rule 7.2(b)) provides that “(a) lawyer shall not give anything of value to a non-lawyer for recommending the lawyer’s services ...” This prohibition is contained in ABA Model Rule 7.2(c). Furthermore, ABA Model Code DR 2-103(B) provides that “(a) lawyer shall not compensate or give anything of value to a person or organization to recommend or secure (the lawyer’s) employment by a client, or as a reward for having made a recommendation resulting in the lawyer’s) employment by a client ...” In other words, the same rule seems to exist in one form or another in virtually every state.

In the view of the Committee the activities alluded to in Questions 4 through 7 could be viewed as violating these rules. The language of the above cited rules does not appear to permit the lawyer to pay for the privilege of being on an approved list as a “Designated Counsel Group”. When such payments or contributions are required either by the union or by the “Designated Counsel Group” there is every appearance that the payments are a *quid pro quo*.

We have been referred to no cases or bar opinions approving of such payments, and we have found none. Given the clear language of Rule 7.20(2) the Committee must answer the question with a “No”, qualified only by the caveat that the Committee cannot opine on questions of Constitutional Law.

We also note in passing that the Committee expresses no view as to the legality of such payments. Indeed, the Committee does not answer questions of law. KBA E-330 (1988). The Committee’s opinions serve only an interpretive and protective function, and are non-binding. See SCR 3.530; Lawline v. American Bar Association, 956 F.2d 1378 (7th Cir. 1992).

Because this is a question of some importance, which is not peculiar to Kentucky practice, the Committee recommended that the Board authorize us to seek an opinion from the ABA Standing Committee. The Board voted that such an opinion be sought.

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.”