

KENTUCKY BAR ASSOCIATION

Ethics Opinion KBA E-362

Issued: January 1994

Questions: May the Kentucky Lawyer Referral Service (KLRS) inset into its contract with member attorneys the following term

"In all contingency fee cases, the member attorney must submit to the KLRS Director (or allow the KLRS Director to review) documentation adequate to confirm the total amount of the settlement," and may member attorneys comply with it?

Answer: Yes, to both questions.

OPINION

In KBA E-288 (1984) (reissued below) the Committee opined that the KLRS could require participating lawyers to return 10% of any fee collected from a referred case to the KLRS to help defray the expenses of the service. The KLRS has become concerned that contingent fees are not being fully and fairly reported by some participating attorneys.

The KLRS may include a requirement of truthful reporting and verification of fees in contracts with participating lawyers. A lawyer may not engage in dishonesty or make false statements. Rule 4.1. Ordinarily, the amount of a fee is not privileged information in an evidentiary sense. If the consent of the client and attorney is deemed necessary under Rule 1.6, then it must be provided for in the KLRS contract and in the contract between the member attorney and his or her client. We note however that if the settlement agreement requires confidentiality, the KLRS should also be bound by such agreement. In the Committee's view, if a settlement can only be reached on condition of confidentiality, it should be sufficient that the lawyer certify to the KLRS his or her compliance with the (10%) remittal requirement, given the sanctions available under Rule 4.1.

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."