

**KENTUCKY BAR ASSOCIATION**  
**Unauthorized Practice of Law Opinion KBA U-40**  
Issued: November 1984

**Question:** May an attorney enter an agreement to prepare wills for the primary clients (insured persons) of an insurance agency, at the expense of that insurance agency?

**Answer:** No.

**References:** DR2-103; Wis. Op. E-79-4 (n.d., Maru doc. 13084); KBA v. Stuart, 568, S.W.2d 933 (Ky. 1978); KBA E-264; Iowa Op. 81-8(1981); Chicago Bar Op. 82-3(1982); Neb. Ops. 81-10 and 81-12(1981); Mich. Op. CI-642 (1981); Mich. Op. CI-525 (1980); Conn. Op. 81- 6(1980); DR 5-107(A)(B).

**OPINION**

Insurance Agency and Lawyer have agreed that the agency will provide a form letter to its clients containing a proposal that the lawyer will prepare the will of the insured at the insurer's expense. The letter also offers additional services for the primary client's spouse. The letter will be accompanied by an "information sheet" prepared by lawyer. The role of the agency is "limited to the sale of insurance and securities".

DR 2-103\* provides in pertinent part:

DR 2-103 Recommendation of Professional Employment.

- (A) A lawyer shall not recommend employment, as a private practitioner, of himself, his partner, or associate to a non-lawyer who has not sought his advice regarding employment of a lawyer.
- (B) Except as permitted under DR 2-103(C), a lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client, or as a reward for having made a recommendation resulting in his employment by a client.
- (C) A lawyer shall not request a person or organization to recommend employment, as a private practitioner, of himself, his partner, or associate, except that he may request referrals from a lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists and may pay its fees incident thereto.
- (D) A lawyer shall not knowingly assist a person or organization that recommends, furnishes, or pays for legal services to promote the use of his services or those of his partners or associates. However, he may cooperate in a dignified manner with the legal service activities of any of the following,

provided that his independent professional judgment is exercised in behalf of his client without interference or control by any organization or other person:  
(THE FIVE EXCEPTIONS TO SUBPART (D) DO NOT INCLUDE FOR-PROFIT INSURANCE AGENCIES.)

A similar “feeder arrangement” was examined in Wisconsin Op. E- 79-4 (n.d., Maru doc. 13084). A bank, in a promotional effort to increase its business, wanted to inform its customers and prospective customers of the importance of estate planning. Such persons were referred to a recommended lawyer. The Wisconsin Committee ruled that such a plan would result in improper solicitation through an intermediary or agent. The Committee also noted that the lawyer would be giving something of value to the bank more customers or more satisfied customers.

We do not believe that the proposed agreement involves a simple matter of advertising, as in KBA v. Stuart, 568 S.W.2d 933 (Ky. 1978). Nor is it a simple matter of a lawyer receiving compensation from a third person, *See* KBA E-264. In addition to the above cited Wisconsin Opinion, we rely upon the following: Iowa Op. 81-8(1981) (solicitation by bank through a flyer); Chicago Bar Op, 82-3( 1982) (solicitation by bank for free estate planning services); Neb, Ops. 81-10 and 81-12(1981) (individuals and savings and loans as “feeders”); Mich. Op. CI-642 (1981) (insurance agents distributing flyers); Mich, Op, CI-525 (1980) (psychological clinic as “feeder”); Conn. Op. 81- 6 (1980) (mutual sponsorship of flyer by realty agency and law firm constitutes “collateral solicitation “); See also ABA/BNA Lawyer's Manual on Professional Conduct 81:2001. et. seq.

Finally, we note that there are additional risks that the insurance agency may have a financial interest in the way the client's estate is planned. By allowing the insurance company to reimburse him or her, an attorney may find it difficult to exercise his or her independent professional judgment on behalf of the client. DR 5- 107(A)(B).

The Supreme Court has construed Rule 3.130(1) as adopting only the 1969 version of the ABA Code, Kentucky Bar Association v. Wilkey, No. 80-SC-671-KB(KY. Dec. 16, 1980).

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***Note to Reader***

*This unauthorized practice 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 in part: “Both informal and formal opinions shall be advisory only.”*