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Committee on Professional Ethics

Opinion #524 - 9/15/80 (19-80)

Topic: Solicitation; auction of legal services by charity

Digest: Improper for lawyer to donate legal services to a charitable organization for auction as a fund-raising device

Code: EC 2-30, 6-1;
DR 2-101(C) and (D),
2-103(A), (B) and (C),
2-109, 6-101

QUESTION

May a lawyer donate his legal services to a charitable organization which will auction the services to the highest bidder as a fundraising device?

OPINION

Whether the auctioning of legal services under the circumstances here presented is a solicitation prohibited by Section 479 of the Judiciary Law is a question of law which is beyond the jurisdiction of this Committee to answer. If it is so prohibited, it constitutes a violation of DR 2-103(A), and would perforce be unethical.*

Nevertheless and whether or not the practice is viewed as improper solicitation, it seems clear that a lawyer who has committed his services to be auctioned is unable to exercise the professional judgment and discretion that must be brought to bear in deciding to accept a client. The Code specifies a number of factors relating to the client and the legal matter that a lawyer must consider prior to undertaking representation. See, e.g., EC 2-30, EC 6-1, DR 2-109 and DR 6-101. For example, and most obviously, a lawyer "should accept employment only in matters which he is or intends to become competent to handle." EC 6-1. In the context of a charitable auction, the lawyer has agreed to represent the successful bidder without knowing whether the employment will involve him in a matter beyond his competence. Similarly, the bidder has been committed to pay a "fee" without knowing whether any meaningful services can be provided.

*DR 2-103(A) was amended effective, April 29, 1978, to proscribe solicitation "in violation of any statute or court rule." By this amendment, it was sought to limit the exceedingly broad ambit of the general ban on all forms of solicitation. The 1978 amendment, however, did not operate to replace all ethical restraints on solicitation with statutory or court made standards and left substantially in tact the specific ethical proscriptions of DR 2-103(B) and (C).

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The practice of donating legal services to a charitable organization to be auctioned as a fundraising device may also be deemed improper under DR 2-103(B), which prohibits the lawyer from giving anything of value to a third party for recommending or obtaining the lawyer's employment. In ABA Inf. 1288 (1974), a lawyer offered to prepare wills for church members, who would pay the lawyer's standard fee directly to the church as a donation. Although the lawyer's motives were charitable, the opinion held that the arrangement would be improper under DR 2-103(B), since the lawyer would be giving a thing of value to the organization obtaining his employment. The relationship between the church and the lawyer that was deemed improper is indistinguishable from the relationship between the lawyer and the charitable organization that will auction his services. In both cases, the lawyer would be directing the payment of his fee to the organization in return for obtaining employment by a client. See DR 2-103(C).

Finally, the offering of legal services as a fundraising device does not appear to be an appropriate means of publicizing the lawyer whose services are being offered. Cf., DR 2-101(C) and (D). Such devices, we believe, tend to confuse the process of intelligent selection of counsel with the objectives of the fundraising organization.

For the reasons stated, the question posed is answered in the negative.

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