

BAR ASSOCIATION OF ERIE COUNTY

COMMITTEE ON PROFESSIONAL ETHICS

Opinion 04-06 - 12/6/04

Topic: Acceptance of nominal legal fees by Not-for-Profit organization.

Digest: Financial Ability to Employ Counsel: Persons Unable to Pay Reasonable Fees; Solicitation and Recommendation of Professional Employment.

Code: DR 2-103 D. [§1200.8].

EC 2-25; 2-33.

QUESTION

May a New York State Not-for-Profit organization, which provides some legal services to its clients, accept a nominal legal fee, or use a sliding scale in establishing a legal fee that is less than reasonable, from its clients?

OPINION

Background

A Not-for-Profit agency, organized under New York State law, whose primary purpose is providing services and opportunities to persons (clients) with disabilities and their families. In furtherance of this mission, staff attorneys provide legal assistance to clients in Guardianship and in Medicaid proceedings. There are no contractual limitations prohibiting the agency from receiving legal fees.

Each client is financial evaluated. Clients who can afford to pay, above the guidelines, reasonable legal fees are advised to retain their own counsel. For clients unable to pay reasonable legal fees, income below the guidelines, legal services are provided on a sliding scale, which is always below reasonable, depending upon the client's ability, or *pro bono*.

Caveat

This opinion does not address the threshold legal question as to whether the agency is authorized to provide legal service, employ attorneys, or under what conditions an attorney may receive referrals from the agency, and, for purposes of this

opinion, presumes that the Not-for-Profit agency is authorized to provide legal services incidental to its primary purpose, pursuant to the Judiciary Law, § 495 (7)¹ or another provision of the Judiciary Law which would authorize the agency to employ attorneys to represent its clients and has complied with § 496 of that law.

Analysis

There is no disciplinary rule which specifically addresses the question presented.

However, EC 2-25 prescribes

[a] lawyer is under an obligation to render public interest and pro bono legal service. A lawyer may fulfill this responsibility by providing professional service at no fee or **at a reduced fee** to individuals of limited financial means or to public service or charitable groups or organizations, or by participation in programs and organizations specifically designed to increase the availability of legal services. In addition, lawyers or law firms are encouraged to supplement this responsibility through the financial and other support of organizations that provide legal services to persons of limited means. **[Emphasis added.]**

Legal Aid Societies², and like organizations, who are organized or under contractual obligations to provide legal services for specific groups of clients at no fee are not part of this analysis. Nor are private attorneys who advertise their fees³. Nevertheless, it is clear that the ethical consideration discusses the providing of legal services both by pro bono and at reduced rates.

Attorneys who provide such legal services or receive referrals from such Not-for-Profits should be mindful of the provisions of DR 2-103 (D.) [§ 1200.8 (D.)]. However, the term "bona fide organization," used in the disciplinary rule is undefined.

CONCLUSION

A New York State Not-for-Profit organization, which provides incidental legal services to its clients, may accept a nominal legal fee or use a sliding scale in establishing a legal fee that is less than reasonable from its clients.

1.. See Paskowski v. DiBenedetto, 184 Misc.2d 34, 705 N.Y.S.2d 521. [Rockland County, 2000]

2. Legal service corporation was disqualified from representing plaintiff in action who indigency was not alleged and therefore did not qualify for representation by corporation organized to assist persons without financial means because the legal services corporation violated court order organizing said corporation prohibiting it from accepting contingency fees, Chao v. Chin, 78 Misc.2d 1055, 359 N.Y.S.2d 161, appeal dismissed and rev. on other grounds, 47 A.D.2d 941, 369 N.Y.S.2d 1017. [2nd Dept. 1975]

3. See DR 2-101 (G.) [§ 1200.6]