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**E-75-20     Legal services to indigents program of  
County Bar Association: Mandatory  
participation**

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A county bar association, a voluntary group of attorneys within a county has formulated a proposal which calls for all attorneys within a county to render gratuitous legal services to indigent persons upon a rotational basis, within its guidelines set forth in the plan. As a part of the proposal, each member would be assessed a sum of approximately \$100-150 for each assigned case which is refused by that attorney. There has been a negative reaction by one or more lawyers who maintain offices within the county. The inquiry is whether enactment and enforcement of such proposal would be ethically proper?

In considering this ethical problem, the committee was concerned with three questions: (1) Can such a legal services proposal be made to bind both members and non-members of a voluntary county bar association who maintain offices within the county? (2) Is it proper to offer the lawyers the alternative of either taking a case in a field of law in which he may or may not feel competent, or being assessed a fee for the rejected case? (3) Would refusal to participate in such program violate the lawyer's responsibility of providing legal services to low income persons?

The committee noted that ABA Formal Opinion 227 recognized that a local bar association could establish a legal referral service, its dominant purpose being to provide competent legal services to persons in low income groups at fees within their ability to pay, as an obligation of the profession. The question there was whether the local bar could allow non-association members to participate in such program. This was in distinction to the matter of required participation by non-members.

Opinion 227 concluded that all lawyers in a geographical area *may* participate in a legal referral (legal aid) program, but that all participants must be treated equally. Both members and non-members may be required to agree to abide by reasonable rules and regulations to carry out the plan.

Later, ABA Formal Opinion 291 stated that the committee did not deem it proper to lay down hard and fast requirements as to whether such legal referral

panels should be confined to members of the local bar group. In some bar associations, such provision might be reasonable; in others, it might not.

There is clear precedent for non-members of legal referral (legal aid) programs; that such membership is within the discretion of the membership, and that such panelists may be bound by "reasonable rules and regulations." There were no opinions which would be precedent for requiring non-members of local bar associations to participate in such a program.

On the second question, as to whether it is proper to offer the alternative of taking an assigned case or being assessed a fee, again the principle of reasonableness is underscored. ABA Formal Opinion 227 held that an annual registration fee to defray the costs and operations of the program could be levied on the lawyer panelists both members and non-members of the local bar association. Registrants could be required to agree to abide by reasonable rules and regulations, promulgated by the bar association, respecting registrants in carrying out the plan.

One additional consideration on the matter of assessment of a fee as a part of the proposal is whether such feature interferes with the independent professional judgment of the attorney. DR 2-103(D) provides that a lawyer may cooperate in a dignified manner with the legal services activities of a local bar provided that his independent professional judgment is exercised in behalf of a client without interference or control by another organization or person. It is believed that the proposal permits the lawyer to exercise his independent professional judgment, in that he has the option of accepting a particular case or paying the assessed fee.

Clearly, a lawyer must represent a client in a competent manner and must be educationally qualified or be qualified by his experience to take on such tasks. It is submitted that many of the legal aid cases are of the so-called garden variety matters, in which a member of the bar with reasonable diligence could become competent to furnish such representation. But should he or she not feel qualified to do so, again we point to the alternative of taking the case or paying the assessed fees.

Unquestionably, competently representing a client is the obligation of each attorney. The alternative of taking a legal aid case or being assessed a fee under the proposed plan appears to furnish an appropriate option so that the lawyer may

exercise his independent professional judgment, provided again that such rules and regulations of the program are deemed “reasonable.”

Third, the committee is painfully aware of the individual lawyers’ and the Bar’s responsibility to make competent legal services available to the public. The Attorney’s Oath emphasizes “I will never reject, for any consideration personal to myself, the cause of the defenseless or oppressed or delay any man’s cause for lucre or for malice.” Canon 2 of the Code of Professional Responsibility elaborates: “A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available.” And EC 2-25 reiterates the duty of lawyers to provide legal services to persons unable to pay reasonable fees, and recognizes and supports the need for attorneys to band together in an organized attempt to carry out their obligations with the recognition that the efforts of the individual lawyer are not always sufficient to meet the needs of the public. Previously, we cited DR 2-103(D) as permitting individual lawyers to join organized groups to provide such legal services to the indigent.

However, in each citation above, participation with a bar group though encouraged, is not required. The committee can find no ethical rule or precedent for compelling participation of lawyers in a voluntary plan operated by a bar association, nor can it find that such refusal to participate in a plan would constitute a violation of the lawyer’s responsibility to provide legal services for low income persons.

In conclusion, the Professional Ethics Committee has concluded that a voluntary county bar association may properly establish and maintain a legal aid plan on a voluntary basis and can require its members to participate in the program as a condition of membership. Also, it can invite non-member attorneys to participate on a voluntary basis. In operation of the plan, the bar association can promulgate reasonable rules and regulations including an alternative plan for the participants accepting legal aid cases on a rotating basis or rejecting the case but paying an assessed fee.

The committee further recognizes the highest professional obligation of attorneys to assist the Bar in making competent legal services available, particularly to those who are financially unable to pay for such services. Likewise, it is cognizant of the ethical rules which make participation in an organized plan most desirable.

The committee also is mindful of the provisions under Canon 6 which require that an attorney represent a client in a competent manner, and the Disciplinary Rules and Ethical Considerations therein which require that a lawyer who is not educationally qualified to represent a client in a given matter to decline such employment or to associate a lawyer who is properly qualified.

It is the committee's considered opinion that only the Supreme Court, or an integrated state bar association acting under the authority of the court, can promulgate a compulsory legal aid plan which is binding on all lawyers in a geographical area.

While the committee believes that a legal aid plan operated by a voluntary local bar association in which all lawyers within the county participate on a rotating arrangement is most meritorious, it finds no ethical requirement that an individual lawyer must subscribe to such plan. Rather, he can fulfill his ethical obligation to make his services available to those financially unable to pay for them on an individual basis, if he so chooses.