

Raffling Legal Services

While I can see a few obvious problems with the idea, I am wondering what your thoughts are offering legal services as a raffle prize. I've been getting a few requests from boards I'm on or other local organizations to see if I can "donate" something to their fundraiser raffles. My thought was to offer either a discount off a particular service, or a single service gratis - i.e. draft a "simple" Will, handle a residential closing, prepare a lease agreement, etc.

The biggest issue I can see so far is what happens if the winner is someone with whom I have a conflict? I don't see a high likelihood of that, but it's a concern.

Also, *if* I actually offered the service free would that qualify as pro bono?

Any thoughts?

Among the other issues, don't do it simply because no one wants to win. Put together a gift basket of coffee and a mug or a holiday gift basket or pretty much anything else. Include a pen with your information or a mug or something. And then include a business card. It is name recognition you want, not someone getting a free "legal service."

Jonathan Stein, California

I like this idea. I might start doing that. Putting gift baskets together can be fun.

Because face it, ain't nobody bidding for a free consultation on a divorce.

Elizabeth Pugliese, Maryland

I once did this for a Chamber, offering a couple of hours of business discussion. It was a bust.

Erik Hammarlund, Massachusetts

Check your ethics opinions. Michigan issued one that has banned donating services for raffling or auctioning off. So many issues with conflicts of interest, fee splitting, etc.

Leon J. Letter, Michigan

I've done this a couple of times for my local humane society; either auction or door prize of simple will for up to 2 people. Technically yeah, there could be conflict of interest but that's exceedingly rare in estate planning; in the extremely unlikely case that it had happened I'd send them to another EP lawyer and simply pay their fee for them; but it isn't likely.

Ronald Jones, Florida

I did this once many years ago when pressured to do so for a charity event put on by an organization on which I am a board member. To be truthful, I wasn't keen on the idea but ended up donating an hour of my time strictly limited to an IP consultation. It was a silent auction and only one person, who at the time was a client of one of Portland's major IP boutiques bid on the item. The person had an extremely full schedule and called one morning a few weeks later on a day that wasn't the best for me. However, the person really wanted to meet later that morning and I reluctantly agreed. The person came in, we hit it off immediately, the one-hour consultation went on for 2-1/2 hours and the person continues to be one of my best and most interesting clients.

I had concerns about the potential for conflicts but decided that if one existed, I would either refund what the person had paid or make a referral to another attorney (and pay for one hour of the time if that attorney wanted to be paid).

My recommendation if you decide to do this is limit the service to something you are comfortable doing so you can deliver at least something of value. Also, a "consultation" can be a good way to express the offer. For example, no one would reasonably expect an attorney to prepare a patent application in an hour but a consultation regarding the invention and the various options that a client could explore would be reasonable.

Finally, if the winner of the raffle has paid (directly or indirectly) to participate in the raffle, I don't think the prize would be considered pro bono.

Bert Krages, Oregon

Years ago, the California State Bar issued an ethics opinion which throws some cold water on the idea. Can be done, with limits. The opinion can be found at:

<<https://www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/1982-65.htm>>

Inadequate summary:

The Committee has concluded that even in this fact situation there is no fee-splitting. The fee for the donated 10 hours has gone in its entirety to the charitable organization. From the outset, as a result of communications that accurately inform the auction attendees of the nature and extent of the donated legal services (see Section D, *infra*), the lawyer, charitable organization, and potential clients are aware that the fees for any legal services exceeding the donated services are subject to separate negotiation between the lawyer and the client.

.Balanced against the remote likelihood of abuse of fundamental public policies are the benefits that flow from an attorney's donation of legal services to a public service or charitable organization's fund raising event. Encouraging members of the bar to donate funds or legal services for the benefit of society is consistent with the highest goals and historic role of the legal profession. (See Bus. & Prof. Code, 6068(h); ABA Code of Prof. Responsibility, canon 2 and EC 2-1.) ...

In sum, although a lawyer's donation of legal services to be auctioned as a fund raising device for the benefit of a charitable or nonprofit organization is not *per se* violative of rule 2-101 of the Rules of Professional Conduct, the lawyer must exercise caution in order that the various provisions of the rule are not violated inadvertently.

.One solution to this dilemma is as follows: (1) as a condition to donation of the legal services, the charitable or nonprofit organization must agree in advance to refund the auction price bid if the lawyer cannot take the case; (2) the organization must agree to refund the *pro rata* portion of the auction price bid if, as a result of his or her professional obligations, the lawyer is unable to complete the engagement; (3) the

lawyer, the charitable organization, and the auctioneer should state clearly in advance that the lawyer's services will be available only if, following the initial consultation, the lawyer determines that the representation is consistent with his or her professional obligations; and

(4) if the lawyer cannot accept the employment or is required to withdraw from representation, the lawyer should assist the client in obtaining a refund of all or part of the auction price bid.

CONCLUSION

Lawyers may be asked to donate legal services to a charitable or nonprofit organization which will auction such services as a fund-raising device. The legal profession traditionally has contributed to charitable and *pro bono* activities, and should be encouraged to continue doing so.

However, a number of professional standards and ethical considerations circumscribe the manner in which the lawyer may make his or her donation of legal services, and the manner in which such services may be auctioned. The prudent lawyer should pay careful attention to these rules and considerations.

Paul Hogan, California

A really popular one out here is a movie basket - some DVDs, some snacks.

Bonus points if you put something like Liar, Liar or My Cousin Vinny in there.

Corrine Bielejeski, California

You might have more success sponsoring the fundraiser, plus, you would get probably a tax deduction for doing so.

Brian Yacker, California

Pro bono for what purpose? Personally, assuming that the venue was a qualifying charity, you'd get more value out of writing it off as an in-kind charitable donation for its value. If you do that, though, it's not pro bono, because you got value (the deductible donation) for it.

If you raffle off a "coupon" or something like that, be sure to specify that it has no cash value; make it transferable instead. That would give you one out for a conflict; they can always sell the voucher to someone without a conflict.

Richard J. Rutledge, Jr., North Carolina

I've done this, with success, this year, and am preparing to do it again next year. I'm in a relatively small town, so YMMV. It's not pro bono.

My local Chamber does free Concerts in the Park, and each concert gets on average about 600-800 attendees. They've been asking us for donations of small prizes for years, and last year after much internal discussion I gave away at each concert a free one-hour consultation on an estate planning matter (to limit conflicts) or free simple estate planning document for just one person (DPOA or simple will, etc.). I put an expiration date of the end of the calendar year on them, so some may still come in. It was the first time we had tried something like that.

One person who won it was already a client, and wanted me to look at something, so I did, for free. No problem. Apparently, though, when she won it she told everyone sitting around her at the park that I was already her attorney and she was excited it was for me. I got at least one new client who was sitting near her from that experience (my client contact form literally said "Lady sitting next to me at concert in the park won a free consultation, and said you were her attorney and recommended you.")

I think three so far were new folks. None of them wanted just the consultation or just a simple document that was free. They all were fine with what I charged them, applying a discount of either one free document or the value of that to the total bill. I just finished one, and it was a pretty extensive estate plan that included a trust (she came back in about 2 months after the free consultation). All of those who came in told me that they had been meaning to go see an attorney for estate planning services for years, but had never gotten around to it, and this gave them the push to just get it done.

I also was asked by someone I know at one of the funeral homes to donate something for her child's school's silent auction. I did the same (free one-hour consultation or simple estate planning document). As it turns out, one of my employees bought it, and used it for me to do some estate planning for a family member (not her spouse) that they've been hounding them to just take care of. Notwithstanding this, I think

the goodwill it built with the person requesting the donation was worth so much more than the time I spent on that case.

I went into this expecting to get my name out there for the marketing value, and expecting most folks to just want the free service and nothing more. That is not how it turned out, and I was pleasantly surprised.

We also do coffee gift baskets (reusable to go cup, coffee, creamer, \$5 Dunkin gift card) for Chamber lunches, again just to get our name out there among other businesses. I don't know of any particular direct client I've gotten for that, but it is intended more for general marketing purposes and costs <\$20/event.

Cynthia V. Hall, Florida

The Ghost of Solosez Past

ABA Journal July 1998

<https://books.google.com/books?id=wQExDxMs2FAC&pg=PA84&lpg=PA84&dq=ABA+%22Patricia+M.+Joyce%22&source=bl&ots=T'QRfiykBNN&sig=k-wUFt5HiSjNiA8a8bsbBb3qeo&hl=en&sa=X&ved=0ahUKEwjJupvhstDXAhUjY98KHYYXWafYQ6AEIQzAG#v=onepage&q=ABA%20%22Patricia%20M.%20Joyce%22&f=false>

My Geoffrey, the little guy on the left, is now 23 and 6'2" tall!

Patricia Joyce, Rhode Island

