

You wish to know whether your firm may honor a fee split arrangement with an attorney who, during the pendency of an action, became disabled to practice law due to a mental disability and whose license was suspended. There is no allegation of wrongdoing surrounding the suspension and the personal injury case which is the subject of the fee was settled after the original lawyer became disabled.

DR:3-102(A) provides that "A lawyer or law firm shall not share legal fees with a non-lawyer except ..." in three circumstances, none of which are applicable to the present fact situation. Two of these provisions provide for payment to a deceased lawyer and the third pertains to payment to nonlawyer employees of a law firm in a compensation or retirement plan. The Committee has previously opined that it is improper for an attorney taking over for a disbarred attorney to divide a contingency fee with the disbarred attorney prior to the revocation of his license when the fee is received following the revocation of the other attorney's license. (LE Op. 809 and LE Op. 934) The Committee has also previously opined that it is improper for a law firm to compensate a lawyer who has surrendered his license for work performed on files by the lawyer prior to the surrender of his license. (LE Op. 970)

The present situation does not fall within these prior opinions since no misconduct underlies the suspension of the attorney's license. However, the Committee opines that even though the attorney's license was suspended for mental disability rather than any wrongdoing, the attorney is still a " nonlawyer" for purposes of DR:3-102(A). Therefore, it would be improper to divide the contingency fee with the attorney whose license is suspended when the fee is received following the suspension of the other attorney's license.

Committee Opinion
August 1, 1988

Editor's Note. – To the extent that L E Op. No. 1111 is inconsistent with L E Op. No. 1218, it is overruled, since L E Op. No. 1218 provides that compensation to a suspended or disbarred attorney for work performed prior to suspension or disbarment is not improper provided that such payment would not permit the suspended or disbarred lawyer to profit from his own wrongdoing.

L E Op. No. 1218, dated May 8, 1989, provides that to the extent that the opinion overrules L E Op. No. 1111 that opinion is overruled.