

*Supreme Court Approved*  
*November 2, 2016*  
*Committee Opinion*  
*October 21, 1991*

LEGAL ETHICS OPINION 1438

SPLITTING FEES WITH A NON-  
LAWYER: ATTORNEY  
COMPENSATING AN ADVERTISING  
AGENCY BASED ON A PROFIT-  
SHARING PLAN.

An attorney hires an advertising agency to place advertisements for him and proposes compensating the advertising agency, in part, based on a profit-sharing plan.

Although the Committee has previously opined that it is not improper to compensate non-lawyer personnel, on a profit-sharing basis, either in lieu of salary or in addition to salary, under the facts presented, the Committee opined that unless the advertising agency occupies a position with the attorney's firm such that it is a bona fide and regular employee of the lawyer or law firm, such a payment plan based upon a profit-sharing plan would violate the general rule prohibiting a lawyer from sharing legal fees with a non-lawyer. The Committee opined that the exception to the general rule, which permits a lawyer to share legal fees with non-lawyer employees [emphasis added], is inapplicable to the question posed since the advertising agency is independent of the lawyer or law firm and does not operate as a bona fide regular employee of the lawyer or law firm. The committee opined, thus, that the proposed profit sharing compensation plan involves sharing fees with a non-lawyer, in violation of DR:3-102(A). [DR:3-102(A), (A)(3); LEO Nos. 767, 806, 885.]

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