

You have presented a hypothetical situation in which Plaintiff in a civil rights case enters into a contingent fee agreement with Attorney. The contingent fee agreement provides that the entire recovery is subject to the contingent fee. Attorney's fees are awarded to prevailing Plaintiff under 42 U.S.C. § 1988. The awarded attorney's fees may exceed Plaintiff's damage award. Plaintiff has not paid any attorney's fees.

You have asked the committee to opine, under the facts of the inquiry, whether the attorney may include the awarded attorney's fees in the recovery which is subject to the contingent fee agreement, (1) where the attorney's share of the total recovery exceeds the attorney's fees awarded; and (2) where the attorney's share of the total recovery is less than the attorney's fees awarded.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:2-105(C) which articulates the requirements for a contingent fee; and DR:3-102(A) which states that a lawyer or law firm shall not share legal fees with a nonlawyer.

In response to both questions and relative to civil rights cases in which attorney fees have been awarded, the committee is of the opinion that it would not be improper for the attorney to include the awarded attorney's fees in the recovery which is subject to the contingent fee agreement, regardless of whether the attorney's share of the total recovery exceeds or is less than the attorney's fees awarded. The committee believes that in many instances, such as the civil rights case involved here, a contingent fee may provide the only practical means by which one can economically afford, finance, and obtain the services of a competent lawyer to pursue his claim. See EC:2-22. The committee opines, therefore, that the contingent fee described here is not improper under DR:2-105(C), provided that the fee is reasonable, adequately explained, and agreed to by the client and further provided that the fee is not in violation of any statute or rule of court.

With regard to fee-splitting, the committee believes that an award of attorney fees to a plaintiff in a 42 U.S.C. § 1988 case does not constitute legal fees as contemplated by DR:3-102, unless otherwise prescribed by statute or court Order. See Los Angeles Bar Association Ethics Opinion 447 (undated), ABA/BNA Law. Man. on Prof. Conduct, 901:1703.

Committee Opinion
December 14, 1993