

Committee Opinion
October 18, 1988

LEGAL ETHICS OPINION 1130

FEES – REFERRALS: DIVIDING A
REFERRAL FEE WITH A FOREIGN
ATTORNEY.

You have advised that an attorney licensed in the District of Columbia, but not licensed with the Commonwealth of Virginia, wishes to associate a licensed Virginia attorney to handle the misdemeanor offenses against several of his Spanish speaking clients in criminal court in Virginia. The District of Columbia attorney does not handle criminal matters and has agreed to avail himself for communication purposes between the Virginia attorney and the client. Other than acting as an interpreter in these matters, the District of Columbia attorney will not perform or become involved in the criminal matters. The attorney from the District of Columbia has proposed a fee and has suggested collecting the fee from the client, retaining one-half of the fee for himself and submitting the other half to the Virginia attorney, to whom he has referred the business to resolve in court.

You wish to know whether it is improper for the Virginia attorney to accept payment in exchange for handling the criminal matters for an out-of-state attorney's clients. You inquire further, if the answer to the first part of the question is no, then would it be more appropriate for the District of Columbia attorney to charge a referral fee to the prospective client and allow the Virginia attorney to establish a fee schedule directly with the client.

Disciplinary Rule 2-105(D) is the appropriate and controlling rule for matters concerning division of legal fees between lawyers who are in separate firms or who are licensed to practice in separate states. The rule provides that fees may be divided between lawyers if (1) the client consents to the employment of additional counsel; (2) both attorneys assume responsibility to the client; and (3) the terms of the division of the fee are disclosed to the client, and the client's consent thereto is obtained. The committee directs your attention to LE Op. 844, which did not find fee-sharing between “referring” and “working” attorneys to be improper, provided that the attorneys complied with the conditions enumerated in DR:2-105(D).

Ethical Consideration 2-24 [EC:2-24] reaffirms DR:2-105(D), stating that a lawyer should not associate another lawyer outside his firm without the informed consent of his client. A fee may be divided between the lawyers if consented to after full disclosure to the client.

Under the limited facts presented in your inquiry, the Committee believes that the fee arrangement you have proposed would not be improper as long as the attorneys obtain the client's consent for additional employment and division of fee terms, and both attorneys assume responsibility after full and adequate disclosure under the circumstances. The other collateral issues which your inquiry raises are not within the purview of the Committee since they are based on the actions of the District of Columbia attorney.

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Legal Ethics Committee Notes. – This LEO was overruled by Rule 1.5(e), which does not require that a lawyer sharing in fees also share responsibility, thus allowing “referral fees” if the client consents after full disclosure.