

LEGAL ETHICS OPINION 1188

FEES – DOMESTIC RELATIONS:  
ATTORNEY PARTICIPATING IN  
INCREASING ANOTHER ATTORNEY'S  
FEES.

You advised that A and B are engaged in divorce proceedings and are represented by separate counsel. Upon accepting employment, B's attorney agreed to a fee in the amount of \$1,500, which B's attorney asked for in the property settlement on behalf of his client. The parties agreed to discuss the property settlement agreement, which was heavily slanted toward A. Upon the arrival of B and her attorney at A's lawyer's office, they were given a draft of the property settlement wherein the attorney's fees had been increased to \$2,500. Later, B learned from her attorney that A was attempting to make B's attorney's compensation more in line with that which A was paying his own attorneys.

You wish to know whether it is ethically permissible for an attorney to participate in making such an increase and whether B's attorney may accept the fee.

The Committee believes the appropriate and controlling disciplinary rules relative to your inquiry are DR:2-105(A), (B) and (D) and DR:5-106(A). The rules provide that a lawyer's fee shall be reasonable and adequately explained to the client. The basis for the rate of a lawyer's fee shall be furnished upon the request of the client, and a division of fees between lawyers who are not employed by the same firm may be made only if: (1) the client consents to the employment of additional counsel; (2) both attorneys expressly assume responsibility to the client; and (3) the terms of the division of the fee are disclosed to the client and the client consents thereto. (See DR:2-105(A), (B) and (D)) An attorney shall not, except with the consent of his client and after the full and adequate disclosure, accept compensation or anything of value related to his representation or his employment by his client from a third party. (See DR:5-106(A))

The Committee believes that an attorney may not take part in making an increase in any fee without first obtaining the consent of the client. Certainly, where there has been prior agreement between a client and his attorney on the amount of fees and such fees are reflected in the property settlement agreement, it would be improper for the attorney to acquiesce to the proposed increase made by opposing counsel or his client. This is not a situation involving the additional employment of counsel where the client may have consented to the increase in the fees. A lawyer is prohibited from accepting any portion of a fee from a third party, nor any fees which the client disputes. (See DR:9-102(A)(2)) Ethical Consideration 5-22 [ EC:5-22] provides in part that if a lawyer is compensated from a source other than his client, he may feel a sense of responsibility to someone other than his client. Furthermore, the Committee would direct your attention to *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975), in which the United States Supreme Court held that an attorney or members of the legal profession adopting a rigid price such as a minimum fee for a specific contemplated legal service is a form of price fixing which is a violation of § 1 of the Sherman Act prohibiting anticompetitive conduct by lawyers.

Committee Opinion  
January 26, 1989

The Committee would opine that it is improper for an attorney to participate in or agree to an increase of his fees as proposed by opposing counsel when he previously entered into a fee agreement with his client, and the client has not consented to the increase in fees. It is unethical for an attorney to accept or retain any fees proposed by a third party where the client has not consented to the proposed fees and acceptance of the same will have compromised his client's position. It is improper to accept any fees if it is the lawyer's intention to accept direct compensation from one other than his client.

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