

Committee Opinion
May 8, 1989

LEGAL ETHICS OPINION 1218

FEES: SPLITTING FEES WITH
ATTORNEY WHOSE LICENSE HAS
BEEN SUSPENDED.

You have asked the Committee to consider the propriety of disbursement of fees to an attorney whose license has been suspended. Attorney A had been working as a part-time, independent contractor for solo practitioner when that solo practitioner's license was suspended for 60 days. Attorney A then agreed to represent a number of the solo practitioner's clients in specific matters and, as a result, settled a personal injury matter for two of the suspended attorney's former clients with the client's authorization. In addition to the client's agreement calling for a one-third contingency fee division with the suspended attorney and Attorney A had an oral agreement regarding the splitting of fees whereby Attorney A would disburse most of the amount to the suspended attorney for the services rendered by him prior to the suspension. At present, the fees are held in Attorney A's escrow account as the suspension was extended for an additional year.

You wish to know what would be the proper disposition of the fees currently held in the escrow account which were earned in part by an attorney, prior to having his license suspended.

Under the facts you have stated, the Committee believes it is not improper for a suspended or disbarred lawyer to receive a contractual fee as compensation for services rendered prior to suspension or disbarment. In a case where the fee was to be contingent on the outcome of the matter, the Committee is of the view that it is not improper for the suspended or disbarred lawyer to receive *quantum meruit* compensation for services rendered prior to suspension or disbarment. In either situation, no payment may be made if to do so would permit the lawyer to profit from his own wrongdoing. In *Reardon DeBlasia & Meagher*, 477 NYS 2d 307 (1984), the court held that although a suspended attorney may not share any fee for services performed by another attorney during the period of his suspension, the suspended attorney may be compensated for services rendered by him before suspension. Several other state bars have also recently opined that a lawyer who has been suspended or disbarred, or has surrendered his license, may recover fees for the reasonable value of work done or in proportion to the services and responsibilities rendered prior to being disbarred or suspended provided that the fees sought are not related to matters out of which the suspension or disbarment arose. (See e.g. Maru, 12727 (S.C. Bar Op. 21-78); Iowa Ethics Op. 85-15 (5/23/86); Philadelphia Bar Assn. Ethics Op. No. 86-83 (6/19/86)) In an ethics opinion overruling two earlier opinions, the State Bar of Illinois held that compensation to a suspended lawyer for work performed would avoid unjust enrichment and would avoid imposing an economic sanction that might not have relation to the disbarring or disqualifying offense. (See Ethics Opinion No. 87-3, January 29, 1988)

The Committee further opines that compensation to a suspended or disbarred attorney for work performed prior to suspension or disbarment cannot be deemed improper when there are legal remedies available which provide a means for the suspended or disbarred attorney to obtain earned fees, such as the filing of an interpleader petition by the

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receiving attorney or by the *pro se* representation by the nonlawyer for the collecting on an open account. To the extent that LE Op. 809, LE Op. 934, LE Op. 970, and LE Op. 1111 are inconsistent with the foregoing, the Committee overrules that portion of the earlier opinions. (See also UPL Op. 130)

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