

Committee Opinion
February 8, 1994

LEGAL ETHICS OPINION 1572

REFERRAL FEES - IN-PERSON
SOLICITATION - SPLITTING LEGAL
FEES WITH A NONLAWYER: LAWYER
PARTICIPATION IN FOR-PROFIT
REFERRAL SERVICE.

You have presented a hypothetical situation in which Nonlawyer operates a "multiservices" business for his particular ethnic group. Nonlawyer advertises his services and has his own separate office "across town" from Lawyer. Nonlawyer, who has no affiliation with Lawyer, refers his clients to particular professionals who provide various services (i.e., accounting, real estate, computers and insurance).

You further indicate that Nonlawyer proposes to put Lawyer on his referral list; in return, Lawyer charges the client 25% of any recovery on a personal injury matter, a reduced hourly fee for any civil litigation, and a reduced set fee for traffic and criminal cases. Nonlawyer assists in each case referred (i.e., obtaining witness statements, translating, photographing the accident scene, and driving the client to and from health care providers).

You indicate that Nonlawyer charges a set fee for services in civil and criminal cases. For personal injury cases, however, Nonlawyer charges client a fee which consists of a percentage of the client's recovery, usually 5% to 8%. The client agrees to this arrangement in writing. At the time of disbursement of settlement proceeds, Nonlawyer's fee is shown on the disbursement sheet as coming from the client's settlement proceeds.

You have asked the committee to opine under the facts of the inquiry, (1) whether it is improper and violative of the Code of Professional Responsibility for Lawyer to participate in the proposed percentage fee payment to Nonlawyer; and (2) whether, in the alternative, a set fee payment to Nonlawyer would be violative of the Code of Professional Responsibility.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:2-103(A) which proscribes in-person solicitation under certain circumstances; DR:2-103(D) which states, in pertinent part, that a lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client, or as a reward for having made a recommendation resulting in his employment by a client; DR:2-103(F) which prohibits in-person solicitation in personal injury and wrongful death cases; and DR:3-102(A) which prohibits the sharing of legal fees with a nonlawyer, with very limited exceptions.

The committee opines relative to your inquiries as follows:

1. The committee is of the opinion that the proposed fee arrangement violates the Code of Professional Responsibility.

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First, the committee believes that the arrangement is generally violative of DRs 2-103(A) and (D) in that Lawyer pays Nonlawyer a referral fee for the performance of a nondelegable function, i.e., solicitation of clients. See LE Op. 1290. In solicitation of personal injury clients, the arrangement would also be specifically violative of DR:2-103(F).

The committee further opines that the percentage fee payment to Nonlawyer violates DR:3-102(A) since it is improper for the attorney to share his legal fees from the client with a nonlawyer intermediary. See LE Op. 609. All that is collected is properly the property of the attorney and may not be paid to the intermediary. Here, the percentage fee payment is neither a reimbursement to the client, nor a permissible payment to a bona fide employee, but rather improper fee-splitting of a contingent fee with a nonlawyer. See LE Op. 835, LE Op. 1438.

2. The committee feels that although the payment of a set fee would not be improper provided that the fee represents reimbursement for nonlegal services furnished by Nonlawyer, does not exceed the fair market value for such services, and is not otherwise an attempt to circumvent the prohibitions contained in DR:3-102(A), it would not be permissible under the facts presented because it could not be achieved without the violation of DR:2-103(A) and (D).

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Legal Ethics Committee Notes. – Rule 1.5(e) permits fee sharing between lawyers in different firms provided the client consents and the fee is reasonable. The referring attorney may charge a fee for referring a case to another lawyer without further participation in the client's matter.