

LEGAL ETHICS OPINION 1573

CONFIDENCES AND SECRETS:
CORPORATION ACTING AS BILLING
AGENT FOR COURT-APPOINTED
ATTORNEY AND CHARGING
PERCENTAGE OF FEE.

You have presented a hypothetical situation in which Attorney has been court-appointed to represent Client (who is either a criminal defendant, a minor, or an incompetent). You state that in jurisdictions which rely upon the court-appointed system for representation of indigent individuals, the delay in conclusion of the case and payment of fees is approximately two to six months. Upon conclusion of the case and entry of a final Order, Attorney submits his time sheets to XYZ Company, acting as billing agent for Attorney, which then completes the necessary paperwork and files with the appropriate court. XYZ Company exercises no control over the case and has only nonattorney shareholders.

As an example, you indicate that where Attorney earns a \$100.00 fee, XYZ Company issues a check to Attorney for \$93.00 (the fee minus a 7% discount). Thus, Attorney would receive immediate payment, and XYZ Company would receive a 7% fee as billing agent.

You have asked the committee to opine whether, under the facts of the inquiry, the proposed arrangement violates the Code of Professional Responsibility.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:3-102(A) which prohibits the sharing of legal fees with a nonlawyer; and DR:4-101 which provides for the preservation of client confidences and secrets. Further guidance is available through Ethical Consideration 4-3 [EC:4-3] which states: "Unless the client otherwise directs, it is not improper for a lawyer to give limited information from its files to an outside agency necessary for statistical, bookkeeping, accounting, data processing, handling, printing, or other legitimate purposes provided he exercises due care in the selection of the agency and warns the agency that the information must be kept confidential."

The committee is of the opinion that the use of a lay corporation as billing agent is not *per se* unethical.

Although the preservation of client confidences and secrets is mandated by DR:4-101, the committee is of the view that, in accordance with EC:4-3, the attorney or law firm may use the lay corporation's billing services so long as the attorney or law firm provides only "limited" information necessary for the service, selects the billing agency with due care, and warns the billing agency that the information must be kept confidential. Details regarding the *type of* services rendered by the attorney to the client could exceed the limitations contemplated by EC:4-3. *See* LE Op. 1016.