

LEGAL ETHICS OPINION 1760

DIVISION OF FEES WITHOUT CLIENT
CONSENT.

You have presented a hypothetical situation regarding the division and payment of fees between an attorney's former firm and the departing attorney earned in personal injury cases where several clients followed the departing attorney to a new firm, but no client has consented to the division of the fees and no one will consent to the division of the fees. The court ordered the division of the fees between the two firms and stated that no client consent was required.

Under the facts you have presented, you have asked the committee to opine as to whether client consent is required for the described division of fees.

The appropriate and controlling disciplinary rule relative to your inquiry is:

RULE 1.5 [Prof. Conduct Rule 1.5] — Fees

(5) A division of a fee between lawyers who are not in the same firm may be made only if:

- (1) the client is advised of and consents to the participation of all the lawyers involved;
- (2) the terms of the division of the fee are disclosed to the client and the client consents thereto;
- (3) the total fee is reasonable; and
- (4) the division of fees and the client's consent is obtained in advance of the rendering of legal services, preferably in writing.

Rule 1.5(e) [Prof. Conduct Rule 1.5] does require client consent for any attorney to arrange a fee to be shared by more than one law firm. Interpreting the equivalent consent provision in Rule 1.5(e)'s [Prof. Conduct Rule 1.5] predecessor, this committee opined in LEO 1732 [LE Op. 1732] that a firm cannot make a fee share agreement with a departing attorney without client consent. However, in resolving your question regarding court-ordered fee arrangements, Rule 1.5(e)'s [Prof. Conduct Rule 1.5] consent requirement must be considered together with the common law concept of *quantum meruit*. This committee's compendium opinion on fees, Legal Ethics Opinion 1606 [LE Op. 1606], addresses that concept. LEO 1606 [LE Op. 1606] explains that when an attorney is discharged prior to the completion of the employment contract, he is entitled to compensation for the value of the services actually rendered. This concept of *quantum meruit* was deemed the appropriate measure for determining a lawyer's compensation when the lawyer and the client had never specified the amount of compensation to be

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paid. *County of Campbell v. Howard*, 133 Va. 19 (1922). The court in *Heinzman v. Fine, Fine, Legum, and Fine*, 217 Va. 958 (1977), deemed *quantum meruit* to be the appropriate measure for determining a lawyer's compensation where a lawyer has been discharged prior to completion of the employment contract.

The line of authority established by *County of Campbell* and *Heinzman* contemplate court resolution of fee disputes regarding appropriate compensation for attorneys. That is the role of the court: to resolve disputes. In contrast, Rule 1.5(e) [Prof. Conduct Rule 1.5] directs the requirements for an attorney, not a court, to arrange for a fee share. For an attorney to enter such an arrangement, he must, among other things, obtain client consent. As part of the Rules for Professional Conduct, Rule 1.5(e) [Prof. Conduct Rule 1.5] governs the permissible conduct of individual members of the Virginia Bar. Those rules do not dictate or limit the activities of a court. Therefore, even without client consent, it is permissible for an attorney to share a fee with an attorney in another firm so long as the fee share is part of a court order. In conclusion, in your hypothetical, the former firm may share in the fee from a former client who has now become the client of a departed attorney's new firm only if either the client consents to the arrangement pursuant to Rule 1.5(e) [Prof. Conduct Rule 1.5], or, absent that consent, a court orders the fee share as proper compensation for the attorneys.

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