

Committee Opinion
June 10, 1987

LEGAL ETHICS OPINION 945

LAW FIRM – “OF COUNSEL”
ARRANGEMENT BETWEEN FIRMS.

Two separate and independent law firms have reached an agreement whereby the two will become “of counsel” to each other. The two firms practice entirely different areas of law and the agreement provides that the association between the two would be “complementary.” The letterhead of the respective firms will list the other firm as “of counsel” by firm name only without listing individual attorneys. Work would be referred between the two firms; in some instances both firms will perform work, in other instances only one firm will perform the work. In either situation, the referring firm will be entitled to a fee of 10% of the gross billings of the firm actually doing the work, regardless of whether or not the referring firm actually did any work. For all matters referred, both firms will assume responsibility to the client for the specific work referred. The client will not be asked for consent to referral of work since both firms would be considered the same firm. The client will also not be informed of the 10% fee arrangement between the two firms. In addition, each firm will be independently liable for its own separate work for which the other firm is not called in.

It is improper, given the above, for each firm to list the other firm's name on its letterhead as “of counsel.”

It is also improper for the two firms to permit a 10% origination fee. The committee, by this opinion, retracts the statement of LE Op. 442 which indicates that DR:2-105(D) is not applicable to associates and those listed as “of counsel.” [DR:2-102(A), DR:2-105(D) LE Op. 442]

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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.

Rule 1.5(e) does not require that a lawyer sharing in fees also share responsibility, thus allowing “referral fees” if the client consents after full disclosure.