



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in May 2010. Please see the 2010 Illinois Rules of Professional Conduct 5.4. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

**Opinion No. 89-5
July 17, 1989**

Topic: Fee Sharing with Non-Attorney

Digest: A profit-sharing plan in which non-attorney employees participate is proper provided shares are based upon overall firm profit and not tied to a particular case.

Ref.: Rule 3-102(a)(3)
ABA Model Rules of Professional Conduct 5.4
ABA Model Code of Professional Responsibility DR 3.102

FACTS

The attorney has a substantial collection practice, derived mainly from a single client, a collection service. The attorney handles this practice utilizing a non-attorney employee who is exclusively responsible for collection case paperwork, mailings, coordination of schedules, bookkeeping, etc. He is paid a weekly salary and works whatever hours the flow of cases demand.

The attorney segregates the expenses and income of the collection practice and, on a monthly basis, determines what the net income of the collection practice is. As an incentive to diligence and hard work, the attorney has established a profit-sharing plan for the employee. After the monthly collection net profit is determined, the attorney pays the employee a set percentage of the net.

QUESTION

Does this profit sharing arrangement violate the prohibition against sharing legal fees with a non-attorney?

OPINION

Illinois Code of Professional Conduct Disciplinary Rule 3-102(a)(3) states:

- (a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that...(3)
A lawyer or law firm may include nonlawyer employees in a retirement plan even though the plan is based in whole or in part on a profit-sharing arrangement.

This Rule deviates from the American Bar Association Model Rules of Professional conduct as adopted by the House of Delegates of the ABA on August 2, 1983 and the ABA Model Code of Professional Responsibility. The ABA Model Rules of Professional Conduct are designed to replace the ABA Model Code of Professional Responsibility. In any event, both ABA documents contain the same pertinent language which appears to be in conflict with the Illinois Disciplinary Rule quoted above.

ABA Model Rule of Professional Conduct 5.4 states:

- (a) A lawyer or law firm shall not share legal fees with a nonlawyer except that "... (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit sharing arrangement. (emphasis added)

Likewise, the ABA Model Code of Professional Responsibility, Disciplinary Rule 3.102 states:

- (A) A lawyer or law firm shall not share legal fees with a nonlawyer, except that: "... (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit sharing arrangement providing such plan does not circumvent another Disciplinary Rule. (emphasis added)

The commentary to the Model Rules of Professional Conduct, Rule 5.4 states in part that: "These limitations are to protect the lawyer's professional independence of judgement."

This Committee finds that the proposed profit-sharing arrangement would be proper provided sharing is based on a percentage of overall firm profit and is not tied to fees in a particular case. There should be no implied incentive to overreach.

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