



**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 1.5(e) and 1.7 with its Comments [23] and [29-33]. 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. 90-11
January 29, 1991**

Topic: Division of Fees with Referring Attorney

Digest: Division of fees permitted when proportionate to services performed or responsibility assumed. Fees may not be divided with lawyer under ethical impediment to representing the client.

Ref.: Rules of Professional Conduct 1.5(f) and (g) and 1.7(b) and (c)
ISBA Advisory Opinion Nos. 644 and 870

FACTS

Attorney X is retained by client A to defend a traffic charge and to pursue a claim for personal injuries arising out of a collision between the automobile driven by A and a train at a railroad crossing. A's girlfriend, a passenger in his automobile, was killed in the collision. Client B, the girlfriend's estate, asks Attorney X to be referred to an attorney to handle the wrongful death claim. Client B is referred to Attorney Y by Attorney X.

After being advised of the potential claim against Client A, Client B instructs Attorney Y not to pursue the wrongful death claim against Client A because he is a family friend, is unemployed and has no assets other than his personal injury claim. Client B signs an "acknowledgement" prepared

by Attorney Y reciting the decision not to pursue the claim against Client A and explaining Client B's legal rights against Client A. Client B also signs an attorney fee agreement authorizing the payment of a referral fee of one-third of Y's fees to Attorney X from any recovery against the railroad company and the deceased's insurance company under the uninsured motorists coverage.

Attorney X refers Client A's personal injury claim to Attorney Z under an agreement providing for the payment of a referral fee to X of one-third of Z's fees.

Attorney X represents Client A on the traffic charge.

QUESTIONS

1. May Attorney X accept a referral fee from Attorney Y for any wrongful death recovery for client B under the uninsured motorists coverage and the railroad company? Is the opinion changed if the railroad company files a third party complaint against Client A for contribution?
2. May Attorney X accept a referral fee from Attorney Z from a settlement of Client A's personal injury claim against the railroad?

OPINION

Rule 1.5(f) provides that a lawyer may divide fees with another lawyer not in the same firm if "the client consents in writing signed by him to employment of the other lawyer."

- (f) Except as provided in Rule 1.5(j), a lawyer shall not divide a fee for legal services with another lawyer who is not in the same firm, unless the client consents to employment of the other lawyer by signing a writing which discloses:
- (1) that a division of fees will be made;
 - (2) the basis upon which the division will be made, including the economic benefit to be received by the other lawyer as a result of the division; and
 - (3) the responsibility to be assumed by the other lawyer for performance of the legal services in question.

Rule 1.5(g) states:

- (g) A division of fees shall be made in proportion to the services performed and responsibility assumed by each lawyer, except where the primary service performed by one lawyer is the referral of the client to another lawyer and
- (1) the receiving lawyer discloses that the referring lawyer has received or will receive economic benefit from the referral and the extent and basis of such economic benefit, and
 - (2) the referring lawyer agrees to assume the same legal responsibility for the performance of the services in question as would a partner of the receiving lawyer.

Rule 1.7(b) requires that a lawyer not represent multiple clients if:

the representation of that client may be materially limited by the lawyer's

responsibilities to another client...unless:

- (1) the lawyer reasonably believes the representation will not be adversely affected; and
- (2) the client consents after disclosure.

Further, Rule 1.7(c) requires that:

- (c) When representation of multiple clients in a single matter is undertaken, the disclosure shall include explanation of the implications of the common representation and the advantages and risks involved.

Responding first to Question #2, the acceptance of a fee by Attorney X paid by Attorney Z from the proceeds of a settlement of A's personal injury claim is not prohibited by the Rules of Professional Conduct provided that the requirements of Rule 1.5(f) or (g) are met. However, the facts recited in the inquiry do not disclose whether all of the prerequisites were satisfied. In these circumstances, division of the fees is permissible only if Attorney Z fully discloses that Attorney X not only has or will receive an economic benefit but the extent and basis of such benefit, Attorney X is required to assume the same legal responsibility for the representation of Client A as if he were a partner of Attorney Z and the total fee cannot exceed reasonable compensation for all legal services rendered.

In response to Question #1, the Committee's opinion is that acceptance of a referral fee by Attorney X from Attorney Y from any recovery of the wrongful death claim of Client B is not permissible. The acceptance of a fee by Attorney X requires that he assume legal responsibility for the representation of Client B as though he were a partner of Attorney Y. Attorney X would be in the same position as though he had accepted employment by both Clients A and B without any referrals. The conduct and actions of Client A will inevitably be an issue in resolving the wrongful death claim of Client B, even if A is not a defendant. The filing of a third party complaint for contribution against Client A would only exacerbate the problem. Rule 1.7 permits multiple representation only in situations where the lawyer "reasonably believes the representation will not be adversely affected". In circumstances posed in the inquiry, it appears that the interests of the two clients will or are likely to be "materially limited" and "adversely affected". That ethical conflict precludes multiple representation.

In discussion the representation of multiple clients, ISBA Opinions 644 and 870 admonish a lawyer to resolve all doubts against multiple employment. Opinion 870 states in part:

However, as we said in Opinion 644, while a theoretical fact situation can be envisioned in which such representation would be professionally proper, whether in practice such employment is proper must depend upon the fact thereof and all doubts must be resolved against the employee.

Finally, the inquiry does not recite facts to demonstrate that the preconditions established by Rules 1.5 and 1.7 for multiple representation have been met. Even if the multiple representations would not be "materially limited" or "adversely affected", the "acknowledgement" informed Client B of the legal rights of B against A, the driver of the automobile. It is not clear that Client B consented to the representation of Attorney X as though a partner of Attorney Z after full disclosure of the

"implications of the common representation and the advantages and risks involved" in Attorney X's representation of Client A at the same time, as required by Rule 1.7.

In addition, it is not clear that Client A consented to X's representation of Client B after full disclosure or that there was full compliance with the disclosure requirements of Rule 1.5. However, even assuming consent by both clients of the disclosures required by these rules, the ethical impediment precludes the acceptance by Attorney X of a referral fee from Attorney Y.

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