

REPORT . . . LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

By

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We regularly receive complaints and ethics inquiries about the division of fees among lawyers. DR 2-107(A), Code of Professional Responsibility, provides as follows:

“(A) A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of his law firm or law office, unless:

- (1) The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made.
- (2) The division is made in proportion to the services performed and responsibility assumed by each.
- (3) The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client.”

So-called referral fees are a recurring problem. We are occasionally told that some lawyers engaged in personal injury practice, for example, regularly agree to pay referring lawyers one-third of any attorneys' fees collected in referred cases. Since many personal injury cases involve a one-third contingent fee, such an agreement, in essence, provides that the referring lawyer would receive one-ninth of any recovery.

Such agreements are often made without the consent of the client and are improper under DR 2-107(A)(1), which prohibits a division of fees unless there is client consent after a full disclosure.

Even if the client consents after full disclosure, there are usually two additional problems with referral fees. First, if the referring lawyer does no more than interview the client and refer the matter to another lawyer, a division such as that described above is not in proportion to the services performed and responsibility assumed by each of the lawyers, and, therefore, violates DR 2-107(A)(2). Second, in most cases, if the lawyer can receive a substantial portion of the attorneys' fees simply for referring the case and doing little more, the total fee then is theoretically excessive, in violation of DR 2-107(A)(3).

There are, no doubt, some cases in which the work of the referring lawyer is an important factor in

the recovery. In such cases, the referring lawyer has an appropriate and ethically permissible claim to compensation. The division of fees between him and the lawyer to whom the case is referred must, however, comply with DR 2-107.

The second recurring problem is posed by the association or employment by an attorney of another lawyer in an on-going case. In a probate or real estate matter, for example, another attorney may be employed to do title or tax work. The services performed by the second attorney often result in an actual saving to the client because of the attorney's relative expertise in a narrow area. In some cases, the employment of another attorney may not only be laudable, but may be mandated by DR 6-101(A)(1), of the Code, which provides:

“(A) A lawyer shall not:

- (1) Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.”

Even where the employment of another lawyer is desirable or necessary, there must still be compliance with DR 2-107(A). There have, unfortunately, been cases in which another lawyer outside the firm retained by the client has worked on the matter without disclosure to the client. The failure to make such disclosure is contrary to DR 2-107(A)(1), which requires consent to the employment of the other lawyer and full disclosure of the division of fees.

We have, and will continue to enforce, the provisions of DR 2-107, in accordance with the guidelines set forth in this article.