

## How To Share Fees With An Attorney Who Isn't In Your Firm

by  
**Betty M. Shaw, Senior Assistant Director**  
**Minnesota Office of Lawyers Professional Responsibility**

Reprinted from *Minnesota Lawyer* (April 10, 1998)

There are a variety of circumstances when attorneys who are not members of the same firm may split or share attorney fees in representing a client.

Rule 1.5(e), MRPC, sets out the requirements for such an arrangement. It provides:

- (e) A division of fee between lawyers who are not in the same firm may be made only if:
  - (1) the division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation;
  - (2) the client is advised of the share that each lawyer is to receive and does not object to the participation of all the lawyers involved; and
  - (3) the total fee is reasonable.

### Case Histories

During the last few years the Director's Office has issued more than a dozen admonitions for violations of this rule. The most common violation is the failure of the attorneys to obtain the client's written consent to a non-proportional fee-sharing arrangement. For example, Attorney A was a sole practitioner who regularly hired attorneys to represent his clients on an independent contractor basis for pretrial portions of the case.

Pursuant to an oral agreement, Attorney A would pay Attorney B one-third of the attorney fees the client paid to Attorney A. There was no written agreement with the client about this fee-sharing arrangement and neither attorney informed the client about the division of the attorney fees. When the client made a complaint about Attorney A, he responded, "I had virtually no involvement with this case." Attorney A received an admonition for violation of Rule 1.5(e), MRPC

Even if the fee is to be shared on a prorated basis, the client must be advised of the share each lawyer is to receive. Several attorneys have received admonitions for violation of this portion of Rule 1.5(e), MRPC.

For example, a written fee agreement provided in writing that each attorney would be paid in proportion to the services performed and the firms would decide what that division would be. Neither attorney ever advised the client how the very sizable fees were split. Each attorney received an admonition.

Another attorney (C) referred a client's file to Attorney D while Attorney C was to be out of town on a

sabbatical. Attorneys C and D were not in the same firm. They agreed to split the fee in proportion to the work each performed, but neither lawyer informed the client of their agreement and the client did not consent to the fee split. When the client became frustrated with Attorney D, he wrote to Attorney C and asked that Attorney D have no further involvement in the case. Later the client complained about Attorney C's lack of diligence on his case. While the neglect complaint was not sustained, Attorney C received an admonition for violating Rule 1.5(e), MRPC.

Finally, in any fee sharing arrangement the total fee must be reasonable. A couple met with Attorney H in response to a newspaper ad offering a one-half hour free estate planning consultation. During the meeting, the attorney received some basic information about the couple but did not obtain any detailed information about the size and nature of their estate assets. The attorney did not discuss any estate planning tool other than a living trust.

Attorney H then sent the client information form to another law office. An attorney in that unrelated firm entered the information into his computer and produced a standardized packet of documents labeled "Estate Planning Portfolio." At no time did Attorney H tell his clients that another law office would be paid a portion of their fees for preparation of the estate plan. Attorney H charged the couple \$1,600 for doing no more than filling in the blanks on a questionnaire and information form and mailing them out for computer production of a standardized packet of documents. Since there was apparently no independent analysis of the clients' estate planning needs, the total fee was clearly unreasonable for the services rendered and violated Rules 1.5(e) and 1.5(a), MRPC.

## **Referral Fees**

Through its advisory opinion service the Director's Office is frequently asked about "referral fees."

"Referral fees" are a form of non-proportional fee splitting between attorneys from different firms, and agreements for such fee sharing must comply with Rule 1.5(e), MRPC. This means, among other things, that the referring attorney must assume joint responsibility for the representation. The referring attorney may not have an unwaived conflict of interest which precludes representation and must remain sufficiently involved in the representation to comply with the obligations imposed on partners and supervising attorneys by Rule 5.1, MRPC.

When done properly, fee splitting may serve clients by facilitating the association of more than one lawyer in a matter in which neither alone could serve the client as well. As the comment to the rule notes, fee sharing is most commonly used when the fee is contingent and the division is between a referring attorney and an attorney experienced in a particular area of practice.