

Withdrawn/June 13, 2016
Committee Opinion
November 30, 1990

LEGAL ETHICS OPINION 1380

FEES - LAW FIRMS - AIDING UNAUTHORIZED
PRACTICE OF LAW - SPLITTING FEES WITH
NONLAWYER: ARRANGEMENT BETWEEN
MULTI-JURISDICTIONAL OFFICES OF LAW
FIRM

You have advised that a Virginia based law firm, ABC, P.C. ("ABC") and a District of Columbia practitioner, X, P.C. ("X") entered into an agreement for their mutual benefit. Some of the members of ABC were not admitted in the District of Columbia and X was not admitted in Virginia. An office was operated in Virginia and another in Washington, D.C. and the firm was known as "XABC, P.C." ("XABC") in Virginia. Subsequent to the forming of XABC, the decision was made to close the District of Columbia office; thus, X, who was nearing retirement, would be spending more time in the Virginia location and the District of Columbia practice would be limited to X's residence and privileges at a separate firm's office in the District of Columbia. You indicate that X, P.C. was the head of XABC, P.C.'s labor section and, as such, his name would remain in the firm even after he retired. The firm stationery indicated that X, A, B and C were all affiliated, that X was not admitted to practice law in Virginia, and that XABC, P.C. had an address in the District of Columbia in addition to its Virginia location.

You further indicated that a legal problem arose in Virginia with one of X's clients, the basis of which precipitated this inquiry. You have stated that, pursuant to the Agreement between the two firms, X arranged for one of the other principals of XABC to actually represent the client in the matter in question, and that the client was aware of both this arrangement and the fact that part of the fees paid for services would be received by X, P.C..

You wish to know whether the payments made by XABC, P.C. to X, P.C. in accordance with the agreement are violative of the Code of Professional Responsibility.

The appropriate and controlling Disciplinary Rules relevant to your inquiry are DR 2-105(A) which requires a lawyer's fees to be reasonable and adequately explained to the client; DR 2-103(D) which mandates that, with certain limited exceptions, a lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client; and DR 2-105(D) which permits a division of fees between lawyers who are not in the same firm only if (1) the client consents to the employment of additional counsel; (2) both attorneys expressly assume responsibility to the client; and (3) the terms of the division of the fee are disclosed to the client and the client consents thereto.

The committee is of the view that the specific applicability of the pertinent rules to the facts you have presented requires a preliminary determination of whether the new P.C. is in fact a single entity or two entities which have entered into a contract for referral services and office sharing but which remain separate for all purposes except fee-sharing. Such a determination raises a legal question of fact which is beyond the purview of the committee's authority.

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It is the committee's opinion that if XABC, P.C. is determined to be a single entity where the relationship is truly an "organic" one as you posit and where every attorney associated with the entity is jointly responsible for the work done for each client, regardless of who performs the actual services, and where only one charge is made to the client, which charge is reasonable, fully explained and acceptable to the client, then no impropriety exists in the sharing of those fees among the attorneys associated with XABC, P.C. See LEO 945. The methods and proportions in which those fees are shared are business decisions outside the realm of the Code of Professional Responsibility.

Conversely, if XABC, P.C. is determined to be comprised of two separate entities which are not in fact merged into the new P.C., the committee is of the view that the fee-splitting arrangement described in Paragraph 4 of the agreement would be violative of DR 2-105(D) absent the client's consent and the assumption of responsibility by both attorneys. In addition, in such circumstances, the percentage paid to the firm which initiated the matter by the firm which actually performed the work would be violative of DR 2-103(D). With regard to the hypothetical case described in your inquiry, X, P.C.'s client was referred to an attorney/principal of XABC, P.C. who actually represented the client whereas X, P.C. did not provide any legal services in connection with that matter. Under the terms of the agreement, however, it appears that X, P.C. is automatically entitled to receive a percentage of the fees collected by XABC, P.C. Such compensation by one attorney to another for the recommendation or securing of employment would be improper and violative of DR 2-103(D).

The committee cautions that other ethical issues are raised by provisions in the agreement dealing with matters other than sharing of fees. With regard to the continued use of the firm name following the departure of X, P.C. under certain circumstances, the committee directs your attention to LEO 277 in which the committee previously opined that it is improper for the remaining attorneys of a firm to retain in the firm name or on the letterhead the name of an attorney/partner who ceases to practice law, no longer shares space in the law office, but is otherwise engaged full-time in the operation of a business venture. See also DR 2-101(A), DR 2-102(A), DR 2-106(A), ECs 2-13 and 2-15, and LEO 1347.

Furthermore, the committee cautions that, since X has not been admitted to the Virginia State Bar, he is therefore a nonlawyer subject to the constraints of the Unauthorized Practice Rules and Considerations contained in Part Six: Section I of the Rules of the Supreme Court of Virginia. Under those circumstances, the Virginia lawyers affiliated with XABC must be cognizant of the mandates of DR 3-101 proscribing a [Virginia] lawyer from aiding a nonlawyer in the unauthorized practice of law.

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