



Professional Ethics Committee

30 Bank Street
PO Box 350
New Britain
CT 06050-0350
06051 for 30 Bank Street
P: (860) 223-4400
F: (860) 223-4488

Approved January 16, 2013

Informal Opinion 2013-01
Fee-sharing With A Suspended Lawyer

You ask if Rule 5.4 prohibits sharing a contingency fee from a personal injury case with a person whose law license is currently under suspension for conduct not related to the case and who had worked on the case before the suspension. In such circumstances, we believe Rule 5.4 would not prohibit sharing a contingency fee so long as the payment would also satisfy the requirements of Rule 1.5.

Rule 5.4 (a) provides, "A lawyer or law firm shall not share legal fees with a nonlawyer, except [in circumstances that do not apply here]." A person whose law license is under suspension is a nonlawyer. See Practice Book § 2-44A (a), Unauthorized Practice of Law, which provides: "The term 'Connecticut lawyer' means a natural person who has been duly admitted to practice law in this state and whose privilege to do so is then current and in good standing as an active member of the bar of this state."

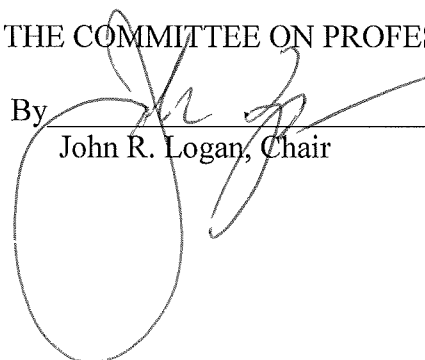
Except for Rule 5.4, the Rules of Professional Conduct are silent on the issue of whether a person can be paid fees while his or her license is under suspension for legal work done before the law license was suspended. On its face, Rule 5.4 (a) would seem to prohibit payment of a legal fee to a nonlawyer regardless of what work the lawyer did before losing his or her license. But such a strict construction would not advance the primary objective of Rule 5.4, which is "to protect the lawyer's professional independence of judgment." See Rule 5.4, Commentary. And such a construction could lead to harsh and absurd results, as shown in this hypothetical. Lawyer A and Lawyer B work together on a personal injury claim for four years and obtain a jury verdict of \$1 Million Dollars. When the money from that verdict is ready to be disbursed, however, Lawyer A's license is under suspension for two years for conduct unrelated to his work on the case with Lawyer B. Under a strict construction of 5.4 (a), Lawyer B could not share the fee during A's suspension, but Lawyer B could share the

fee after A's suspension is over.

Other jurisdictions that have dealt with similar situations have construed Rule 5.4 (a) to allow sharing a fee with a suspended lawyer so long as (1) a right to receive the fee existed and accrued before the suspension; (2) the suspension was unrelated to the client or case that generated the fee; and (3) the payment is made in a manner consistent with applicable rules and statutes. See e.g. *New York State Bar Association Committee on Professional Ethics Opinion # 609*; *Oregon Bar Association Formal Opinion #2005-25*; *Louisiana State Bar Association Rules of Professional Conduct Committee Public Opinion #12-RPCC-018*; *The Supreme Court of Ohio Board of Commissioners on Grievances and Discipline Opinion #89-002*; *New Jersey Supreme Court Advisory Committee on Professional Ethics Opinion #273*; *New Hampshire Bar Association Ethics Committee Advisory Opinion #1992-93/1*.

We agree with those jurisdictions and opine that if a lawyer believes all three conditions are satisfied, Rule 5.4 would not prohibit a lawyer from sharing a contingency fee from a personal injury case with a person who was previously a licensed lawyer, but now is a nonlawyer. ¹

THE COMMITTEE ON PROFESSIONAL ETHICS

By  _____
John R. Logan, Chair

¹ We note that Connecticut does not require a referring lawyer to “work” on a file in order to receive a referral fee. Rule 1.5 (e) provides “A division of fee between lawyers who are not in the same firm may be made only if: (1) The client is advised in writing of the compensation sharing agreement and of the participation of all the lawyers involved, and does not object; and (2) The total fee is reasonable.”