Connecticut Bar Association

Professional Ethics Committee

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Informal Opinion 2013-04
Referral Fee for Action Against Former Client

Attorney A was called by a former client ("Client 1") for general advice regarding a motor vehicle driving summons that Client 1 had received following an accident. In the call, Client 1 discussed the facts of the accident. Client 1 did not ask for Attorney A to represent him and Attorney A made no charge for the general advice given.

Caller 2, who was the driver of the other vehicle in the accident, called Attorney A to ask him to represent her in a civil claim against Client 1 for injuries suffered in the accident. Attorney A told Caller 2 that he had a conflict and referred her to Attorney B. Attorney B asked if Attorney A was seeking a referral fee.

Attorney A asks if the Rules of Professional Conduct prohibit him from accepting a referral fee in this situation.[1]

Rule 1.5(e) provides that:

> 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.

Unlike the ABA Model Rule 1.5(e), the rule as adopted in Connecticut does not require that the referral fee be in proportion to the services performed. The rule permits the payment of referral fees even though the referring attorney does not provide services in or assume responsibility for the representation.

Even though a referring attorney is required neither to provide services in nor to assume joint responsibility for the representation in the referred case, we believe that Rule 1.5(e) by necessary implication requires that each lawyer receiving a fee from the representation of a client establish

[1] We have not been asked to consider and we do not comment on the following issues:

1. When it is impermissible to make a referral of a potential client who has interests adverse to an existing or former client or interests that are adverse to a person with whom an attorney consulted as a "prospective client" within the meaning of Rule 1.18.
2. Whether Attorney A is permitted or required to reveal to Client 1 any of the information learned from Caller 2.
3. Whether Attorney A is precluded from representing Client 1 in the claim brought by Caller 2.

a lawyer–client relationship with the client[2] and, as an attorney for the client, be bound by the Rules of Professional Conduct, even if the scope of the lawyer-client relationship is the referral itself. We reach this conclusion for two reasons:

First, we rely on the wording of Rule 1.5(e), which allows a division of fee "between lawyers . . only if: (1) the client is advised in writing . . . and does not object . . ." and the comment to Rule 1.5(e) which provides: "[a] division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm." We interpret this wording to imply that each participant in the fee split must serve as a lawyer for the client from whom the fee is received.

Second, we note that Rule 7.2(c) generally prohibits the payment of anything of value to a person for recommending a lawyer's services.[3] Rule 1.5(e) is an exception to the general rule, permitting a lawyer to pay a referral fee to another lawyer for a recommendation of the lawyer's services by the other lawyer. We do not believe that referral fees are allowed to be paid to lawyers simply because lawyers possess a license; rather we believe that referral fees are permitted to be paid to lawyers because the referring lawyer has a lawyer-client relationship and because the referring lawyer owes the client the duties prescribed by the Rules of Professional Conduct.

Because Attorney A declined to represent Caller 2, there is no lawyer-client relationship with Caller 2. Without a lawyer-client relationship, Caller 2 is not Attorney A's client within the meaning of Rule 1.5(e) and Attorney A cannot receive any portion of the fee from Caller 2.

Based upon the foregoing analysis we conclude that Attorney A may not accept a referral fee.

THE COMMITTEE ON PROFESSIONAL ETHICS

By_____
John R. Logan, Chair

[2] Accord, Illinois State Bar Association, Opinion 90-26; Massachusetts Bar Association Ethics Opinion No. 80-10; Bloomenthal v. Halstrom, Mass. Super. Ct., Worcester, No. 951773B, 10 Mass. L. Rptr 8 (March 16, 1999); State Bar of Michigan Informal Ethics Opinion RI 116; Evans & Luptak, PLC v. Lizza, 251 Mich App. 187, 650 N.W.2d 364 (2002). Contra, Holstein v. Grossman, 246 Ill.App.3d 719, 616 N.E.2d 1224 (Ill.App. 1 Dist. 1993); Ryder v. Farmland Mutual Insurance Co., 248 Kan. 352, 807 P.2d 109 (1991); Maine Ethics Opinion 103; Philadelphia Bar Association Ethics Opinion 2008-4.

[3] Rule 7.2(3) provides:

> (c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may
>
> (1) pay the reasonable cost of advertisements or communications permitted by this Rule;
>
> (2) pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;
>
> (3) pay for a law practice in accordance with Rule 1.17.