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Professional Ethics Committee

Approved May 21, 2014

INFORMAL OPINION 2014-03

Referral Fee in Non-Contingency Fee Action including Family matters

Attorney A seeks answers to the following two questions: (1) Is it permissible for an attorney to pay to an attorney in another office a referral fee based on the total fee billed in a non-contingency fee case?; and (2) If such a referral fee is permissible, what is the appropriate percentage of the billable fees that should be paid to the referring attorney for the referral fee?

Attorney A has advised that his or her inquiry is in regards to family cases including but not limited to divorce, custody, child support, legal separation agreements, prenuptial agreements, and all other family related issues not requiring a Court appointment¹. Also Attorney A has stated that his or her inquiry extends to other cases that are billed on an hourly basis. We have no other facts regarding the inquiry.

Referral fees are governed by Rules of Professional Conduct, Rule 1.5, which provides, in relevant part, that a division of fees 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.”²

The Rules of Professional Conduct, its commentary, case law, statutory law, and the Practice Book are all silent on the issue of whether an attorney can be paid a referral fee based on

¹ This opinion does not address situations where the referring attorney was appointed as a guardian ad litem or as an attorney for the minor child.

² See Informal Opinion 2013-04, *Referral Fee for Action Against Former Client*, “(e)ven 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 a lawyer-client relationship with the client 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.”

the total fees billed in a non-contingency case. No rules or statutes prohibit such arrangement and we have not found any prior Informal Opinions or Grievance Decisions addressing this scenario. As such, we believe that it is permissible for an attorney to pay an attorney in another office a referral fee based on the total fee billed in a non-contingency fee case, so long as the payment satisfies the requirements of Rule 1.5 and so long as the referral fee is not contingent upon the outcome of the case. See Rule 1.5(d). We reiterate that in order to receive any such referral fee, the following conditions must be satisfied: (1) the client must be advised in writing of the compensation sharing agreement; (2) the client must be advised in writing of the participation of all of the lawyers involved; (3) the client must not object; and (4) the total fee must be reasonable.

We decline to provide an opinion on what is an appropriate referral fee, because the amount of the referral is not of ethical concern, so long as the total fee is reasonable. The attorneys are therefore left to negotiate the portion of the total fee that will be paid to the referring attorney, while keeping in mind the requirements of Rule 1.5 that the client be advised in writing and that the client not object.

THE COMMITTEE ON PROFESSIONAL ETHICS

By _____

John R. Logan, Chair

