



Standing Committee on Professional Ethics

30 Bank Street
PO Box 350
New Britain
CT 06050-0350
06051 for 30 Bank Street
P: (860) 223-4400
F: (860) 223-4488
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INFORMAL OPINION 16-03

Payment of a Referral Fee to Administrator of Decedent's Estate

A lawyer ("Inquirer") inquires whether it is permissible, under the Connecticut Rules of Professional Conduct, for the Inquirer to accept a referral fee from a wrongful death action when the Inquirer serves as administrator of the estate of the decedent.

The decedent was a client of the Inquirer. After the decedent's death, the Inquirer consulted with the family of the decedent and recommended that the matter be referred to an attorney experienced in wrongful death claims. The family agreed and the Inquirer has made such a referral. The Inquirer intends to participate in the prosecution of the wrongful death action and attend each of the major events of the litigation including settlement conferences, depositions, pre-trials and trial.

The executors named in the decedent's will were either ineligible or declined to serve. None of the family members could conveniently serve as administrator. The court appointed the Inquirer as administrator.

The decedent's son and daughter are the beneficiaries of the estate. The son and daughter have no objection to the Inquirer receiving a referral fee.

The narrow issue that we consider is whether a lawyer who serves as the administrator of the estate of a decedent may ethically receive a referral fee from the decedent's wrongful death action.¹ We assume that the total legal fee² charged in the wrongful death case is reasonable and

¹ Our analysis here is limited to the application of the Connecticut Rules of Professional Conduct to this inquiry. We express no opinion about the requirements for the receipt of a referral fee by a fiduciary (such as an administrator) or whether the Inquirer is required to obtain the approval of the probate court for the receipt of a referral fee.

² The total legal fee includes the fee of the attorney to whom the case is referred and the referral fee. It is our understanding that in contingent fee matters the referral fee is generally a portion (defined by a percentage) of the fee charged by the lawyer to whom the case is referred. Since the referral fee is paid out of the standard contingent fee charged by the lawyer to whom the matter is referred, the payment of a referral fee does not generally increase the total fee paid by the client.

complies with all statutory requirements,³ and, therefore, that Rule 1.5(e)(2) is satisfied. We assume that both the Inquirer and the lawyer to whom the case is referred are duly licensed lawyers.⁴ Finally, we assume that the attorney to whom the matter has been referred has entered a written fee agreement as required by Rule 1.5(c).⁵

Rule 1.5(e), governs the sharing of fees between lawyers who are not in the same firm. 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.

Rule 1.5(e)(1) requires that the client be advised in writing of, and not object to, the compensation sharing agreement and the participation of all of the lawyers. Under the facts presented, the Inquirer, as administrator, is the client.

The opportunity to earn a referral fee presents a potential conflict of interest for a lawyer serving as an administrator of a decedent's estate: when selecting counsel to bring the wrongful death claim, the interest of the lawyer in earning the referral fee could conflict with the obligation of the administrator to serve the best interests of the estate.⁶ We believe, however, that the interests of the lawyer referring the case are aligned with the interests of the estate: the best interests of both the attorney and the estate are served by obtaining a fair recovery in the

³ See Conn. Gen. Stat. §52-251c.

⁴ Rule 5.4(a) prohibits sharing of fees with non-lawyers except in certain enumerated circumstances.

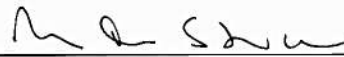
⁵ Rule 1.5(c) requires that an agreement for a contingent fee be signed by the client. Since the administrator of the estate is the client, the fee agreement would be signed by the Inquirer. It may be prudent to seek approval of the fee agreement by the probate court.

⁶ Rule 1.7 (Conflict of Interest: Current Clients) provides: "(a) . . . a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: . . . (2) there is a significant risk that the representation will be materially limited by a lawyer's responsibility to . . . a third person or by a personal interest of the lawyer." In the facts presented, the Inquirer intends to participate as a lawyer in the wrongful death action, so that Rule 1.7 applies to the Inquirer as a lawyer representing a client. We do not address the impact of the potential conflicts of interest faced by the Inquirer as a fiduciary (administrator) because that is a question of law beyond the mission of this committee.

wrongful death claim.⁷ Thus, there would be no conflict between the referring lawyer and the estate: both are best served by a fair recovery in the wrongful death action and both would benefit by the referral of the case to an attorney suited to obtaining a fair recovery.

We conclude that the Inquirer is not prohibited under the Rules of Professional Conduct from accepting a referral fee from a lawyer to whom the decedent's wrongful death claim is referred.

THE COMMITTEE ON PROFESSIONAL ETHICS

BY 

Marcy Tench Stovall, Chair

⁷ There could be circumstances in which other criteria would determine the best interests of the estate. For example, it could be more beneficial for the estate to settle for a smaller recovery at an earlier time. It can be imagined that the referring attorney might prefer a greater recovery at a later date. However, this situation is no different from any case in which the fee is contingent: the referring attorney must accept the client's decisions in these matters. When the attorney is also the administrator, the attorney has the ability to accept or reject the settlement. In such unusual circumstances, the attorney's role as administrator might create a conflict under Rule 1.7(a)(2).