

ADVISORY ETHICS OPINION 1998-11

SYNOPSIS:

Fee splitting or sharing is permitted only with consent of the client and where the fee division fairly reflects the work and contribution of each attorney; a firm may not provide an after-the-fact thank-you gift as a gesture of goodwill to the attorney who referred a case to the firm.

FACTS:

Inquiring firm received a personal injury case referral from an attorney who does not routinely handle such cases. The referring attorney did not participate in any aspect of the handling of the matter but served merely to introduce client to the firm. The firm exclusively handled client's personal injury claim thereafter. The claim was successfully resolved through a substantial settlement which produced a substantial contingency fee for the firm.

The firm now asks whether it is permitted to share or divide with the referring attorney any portion of the fee earned in representing the client. Secondly, the firm asks whether it is permitted, in its discretion, as a gesture of goodwill, to provide a gift to the referring attorney as a form of thanks for making the referral. The firm also asks whether there is a limit on the size of the gift.

ANALYSIS:

DR 2-106 governs fees for legal services and DR 2-107 governs division of fees among lawyers.

DR 2-106(A) prohibits a lawyer from charging or collecting a clearly excessive fee. DR 2-106(B) defines as excessive any fee that is in excess of a reasonable fee. The rule sets out factors to be considered as guides in determining the reasonableness of the fee. The factors include the time devoted by the attorney, the attorney's experience and the nature of the representation undertaken. Here, referring attorney performed no legal services, and, thus, under DR 2-106, any fee would be deemed excessive.

DR 2-107 prohibits the division of a fee with a lawyer from another firm unless:

- (1) The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made.
- (2) The division is made in proportion to the services performed and responsibility assumed by each.
- (3) The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client.

This rule bars any division of the fee with the referring lawyer since the referring lawyer performed no services and since no arrangement for fee division was discussed with or consented to by the client.

With respect to the permissibility of making an after-the-fact thank you gift to the referring lawyer, DR 2-103(C) prohibits such a practice. That rule states as follows:

- (C) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or written communication permitted by this rule and may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.

Model Rule 7.2(c) contains an identical prohibition. The comment to the Model Rule notes that Rule 7.2(c) makes clear that a lawyer "is not permitted to pay another person for channeling professional work."

Given the unambiguous prohibition on giving "anything of value" to a person for recommending the lawyer's services, the firm may not provide a thank-you gift to the referring lawyer.