



## Committee on Professional Ethics

Opinion #369 - 12/19/74 (51-74)

Topic: Professional legal corporation division of fees received by lawyer employees.

Digest: Fees received by salaried lawyer employee of professional legal corporation may properly be turned over to the corporation.

Code: EC 2-22  
DR 2-107; 2-107(A)

### QUESTION

May a professional legal corporation retain, as a part of its gross income, fees turned over to the corporation by a salaried lawyer employee of the corporation which were received by the employee for services rendered on court assigned cases?

### OPINION

A professional legal corporation (see N.Y. Business Corporation Law Sec. 1501, et. seq.) may properly enter into an agreement with a salaried lawyer employee that any legal fees received by the employee, including those resulting from court assignments in criminal or juvenile matters, be turned over to the corporation as part of its gross income.

Under the Code, provisions applicable to "law firms" are equally applicable to professional legal corporations. See Subdivisions (2) and (4) of the "Definitions" provisions of the Code (following Canon 9). Similarly, under the former Canons, standards applicable to lawyers practicing individually or in partnerships were recognized as being applicable to professional legal corporations. ABA 303 (1961).

Both the Code and the former Canons, in such provisions as DR 2-107 and former Canon 34 (and cf. EC 2-22), place certain restrictions on the division of fees between lawyers. Such restrictions, however, do not apply to arrangements involving "partner[s] in or associates or [the same] law firm or law office". DR 2-107(A); N.Y. State 223 (1971). Cf. ABA 303 (1961); N.Y. State 243 (1972); N.Y. State 32 (1966); N.Y. City 684 (1946).

In holding that lawyer shareholders in a professional legal corporation could properly share in legal fees for work performed by lawyers practicing with the corporation, even though the lawyer sharing in the fees had not personally participated in the rendition of the legal service, ABA 303 (1961) explained:

[Former] Canon 34 permits a division of legal fees for

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legal services with another lawyer if the division is based upon a division of service or responsibility. All lawyers within an organization bear a professional responsibility for the legal services of the organization, whether they are under any personal legal liability for all of such services or not. This general professional responsibility of all, though legal liability is limited, prevents any violation of [former] Canon 34, when the lawyers in the organization are entitled to share in the fees collected without regard to whether they personally participated in the rendition of the legal services.

The same rationale has been carried forward into the Code in such provisions as EC 2-22 and DR 2-107(A).

Thus neither the Code nor the former Canons appear to impose any obstacle to agreements entered into by an individual practitioner, by a law partnership, or by a professional legal corporation with a salaried lawyer employee, under which the legal fees received by the employee are turned over to the employer lawyer, firm or corporation as part of its general professional income. Cf. N.Y. County 583 (1970).

It should be noted, however, that a division of fees by a part-time judge with his law partners or employer would be improper, based upon considerations arising under the Code of Judicial Conduct and the former Canons of Judicial Ethics. N.Y. State 370 (1974); N.Y. State 243 (1972); N.Y. State 210 (1970).

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