



Committee on Professional Ethics

Opinion #408 - 8/28/75 (64-75)

Topic: Division of fees between lawyers.

Digest: Proper to divide fees between lawyers provided (1) client knows and consents; (2) division is in proportion to work performed and responsibility assumed; and (3) total fee is reasonable.

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

QUESTIONS

1. May a lawyer, who is a co-executor and attorney for a decedent's estate, share in the fee of trial counsel retained, with the consent of the other executor, to prosecute an action for the wrongful death of the decedent?

2. Is such a fee sharing arrangement proper, where the forwarding lawyer does not exercise any responsibility for the handling of the case and does not share in the work performed?

OPINION

EC 2-22 provides:

"Without the consent of his client, a lawyer should not associate in a particular matter another lawyer outside his firm. A fee may properly be divided between lawyers properly associated if the division is in proportion to the services performed and the responsibility assumed by each lawyer and if the total fee is reasonable."

See also, N.Y. State 134 (1970). Thus, it is not improper for one lawyer to divide a fee for legal services with another lawyer who is not a partner in or associate of his law firm, if as provided in DR 2-107(A):

"(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."

The forwarding attorney must be an active participant in the case in order to receive a portion of the fees; his or her share of the fee must be based upon his or her share of responsibility in the case, and the work actually performed. Where no responsibility is assumed or work performed, any fee sharing would be improper. N.Y. State 338 (1974); N.Y. State 317 (1973); N.Y. City 854 (1962); N.Y. County 596 (1972). See also, Drinker, Legal Ethics 186-188 (1953).

As the co-executor has consented to a fee-splitting arrangement in the instant case, it would not be improper to divide the legal fees in accordance with the above principles.
