

## **Ethics Opinion No. 74-2**

### **Propriety of "Referral Fees."**

The Committee has been requested to give its opinion on the use of "referral fees" where a case is referred to an Alaskan attorney by an attorney from another jurisdiction. Specifically, the question pertains to a situation where a commercial collection matter is referred to an Alaskan attorney by an attorney from another jurisdiction. Substantially all work on the matter is performed by the Alaskan attorney, with only routine matters involving the client's signature being performed by the attorney from another jurisdiction. The Alaskan attorney's compensation is calculated as a percentage of the total amount collected, and after collection efforts have been completed, the outside attorney requests a "referral fee" based on a percentage of the Alaskan attorney's fee.

The Code of Professional Responsibility, DR 2-107, seems to cover the matter adequately. Particularly DR 2-107 (A)(2) which provides that a lawyer shall not divide a fee with another lawyer, unless "the division is made in proportion to the services performed and responsibility assumed by each."

DR 2-107 (A)(2) is a direct successor to Canon 34 of the Canons of Professional Ethics, with the exception that it states the two elements for consideration (division of services and responsibility) in the conjunctive rather than the disjunctive.

It is repeatedly held under Canon 34 that no right to a division of fee arises out of mere recommendation of employment. Drinker, *Legal Ethics*, p. 186. Drinker has also noted that:

"The candor and fairness required under Canon 22 in dealings between lawyers make it incumbent on one expecting a share of the associates fee to advise him of this at the outset, the division between them or the basis thereof being agreed on in advance. Where he does not do so, unless the case is one where obvious service by the forwarder is required and performed after the forwarding, the associate is warranted in assuming that the forwarder will be compensated directly by the client . . ." Drinker, *Legal Ethics*, p. 187, accord A.B.A. op. 265.

In the Committee's opinion, both these propositions remain sound under DR 2-107.

In the question presented, unless it can be reasonably said that the division of services performed and responsibility assumed by the referring attorney and the Alaskan attorney were in the same proportion as the proposed

percentage division of the total fee, the course of action proposed by the referring attorney would be unethical.

Adopted by the Board of Governors on May 15, 1974.

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