

THE PHILADELPHIA BAR ASSOCIATION
PROFESSIONAL GUIDANCE COMMITTEE
Opinion 2010-7
(September 2010)

The inquirer seeks guidance under the Pennsylvania Rules of Professional Conduct ("Rules") with respect to fee-sharing with a law firm located in the District of Columbia ("D.C. Firm"). Specifically, the inquirer's law firm is considering entering into a fee-sharing arrangement with the D.C. Firm, a limited liability partnership. The D.C. Firm has a non-lawyer partner, a relationship that is permitted under Rule 5.4(b) of the District of Columbia Rules of Professional Responsibility ("DC RPC"). The purpose of the proposed fee-sharing agreement is to enable the inquirer and the D.C. Firm jointly to represent one or more of the D.C. Firm's clients as plaintiffs on a contingent fee basis in class action litigation that may be brought in Pennsylvania. Based upon information provided by the inquirer, it is anticipated that the non-lawyer partner of the D.C. Firm will perform non-legal professional services in the course of the representation. The inquirer expects that the fee-sharing agreement will comply with DC RPC 1.5(e). The inquirer seeks guidance whether he may enter into the described fee-sharing agreement with the D.C. Firm under the Pennsylvania Rules.

Rule 1.5(e) permits a lawyer to divide a fee for legal services with another lawyer not in the same firm. However, the division of the fee is not without limitation. For example, Rule 1.5(e) requires that "the client [be] advised of and does not object to the participation of all the lawyers involved." The Rule enumerates numerous factors to be considered in determining the propriety of the fee-sharing arrangement including whether the fee is fixed or contingent. Also under Rule 1.5(e)(2), the fee in *toto* may not be illegal or clearly excessive for the legal services rendered. These fee-sharing requirements must also be considered in the context of fee agreements generally as set forth in Rule 1.5 and comply with that Rule.

The Comment to Rule 1.5 elaborates on the considerations with regard to fee agreements generally:

When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee. In a new client-lawyer relationship, however, an understanding as to the fee should be promptly established. It is not necessary to recite all the factors that underlie the basis of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee. When developments occur during the representation that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client. A written statement concerning the fee

reduces the possibility of misunderstanding. Furnishing the client with a simple memorandum or a copy of the lawyer's customary fee schedule is sufficient if the basis or rate of the fee is set forth.

DC RPC 1.5 also permits fee sharing among lawyers but imposes additional requirements to those under the Pennsylvania rule, both generally and specifically related to fee sharing. For example, DC RPC 1.5(e) requires that the client be advised in writing of the identity of the lawyers who will participate in the representation, the contemplated division of responsibility and the effect of the association of lawyers outside of the firm on the fee to be charged. It further requires that the division of the fee must be in proportion to the services performed or each lawyer must assume joint responsibility for the representation.

While fee sharing among lawyers of different firms is permitted with some differences under both the Rules and the DC RPC, the same cannot be said for fee sharing with non-lawyers. Rule 5.4(b) generally prohibits a lawyer or law firm from sharing legal fees with a non-lawyer and Rule 5.5(a) prohibits a lawyer from assisting another in practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction.

To the contrary, DC RPC 5.4(b) specifically provides:

A lawyer may practice law in a partnership or other form of organization in which a financial interest is held or managerial authority is exercised by an individual nonlawyer who performs professional services which assist the organization in providing legal services but only if:

1. The partnership or organization has as its sole purpose providing legal services to clients;
2. All persons having such managerial authority or holding a financial interest undertake to abide by these Rules of Professional Conduct;
3. The lawyers who have a financial interest or managerial authority in the partnership or organization undertake to be responsible for the nonlawyer participants to the same extent as if nonlawyer participants were lawyers under Rule 5.1;
4. The foregoing conditions are set forth in writing.

Thus the Pennsylvania Rules do not permit fee sharing with non-lawyers while the DC RPC do. Conversely the DC RPC impose additional requirements to those of the Pennsylvania Rules in order for a fee to be divided between lawyers. Notwithstanding these differences, this Committee has repeatedly concluded that a Pennsylvania lawyer may share a fee with a non-Pennsylvania lawyer in accordance with Rule 1.5 regardless of a prohibition or limitation thereon by the

Rules of Professional Conduct of the state in which the receiving lawyer practices (See Philadelphia Bar Association Opinion 93-15 <http://www.philadelphiabar.org/page/EthicsOpinion93-15?appNum=3>).

Specifically in that opinion this Committee held, “A Pennsylvania lawyer can pay a referral fee to or split a fee with an out-of-state lawyer. In doing so, the Pennsylvania lawyer is bound by the Rules of Professional Conduct as they apply in Pennsylvania. The out-of-state lawyer is bound by the ethics requirements of his own jurisdiction.” Furthermore it is the Committee’s opinion that although the DC firm might under some arrangement ultimately share profits with a non-lawyer pursuant to the DC RPC, the propriety of this fee-sharing arrangement under the PA RPC is not vitiated. The D.C. Firm is a duly constituted law firm under the DC RPC and therefore fee sharing in accordance with Rule 1.5 is appropriate.

The Committee, however, suggests that the DC Firm also seek guidance under the DC RPC from the appropriate bar association or committee.

CAVEAT: The foregoing opinion is advisory only and is based upon the facts set forth above. The opinion is not binding upon the Disciplinary Board of the Supreme Court of Pennsylvania or any other Court. It carries only such weight as an appropriate reviewing authority may choose to give it.