

**BAR ASSOCIATION OF ERIE COUNTY
COMMITTEE ON PROFESSIONAL ETHICS**

Opinion 10-4

Topic: Sharing fees with disbarred lawyer;
 reporting misconduct by a lawyer

Digest: A lawyer may pay a disbarred lawyer
 a share, on the basis of *quantum*
 meruit, of legal fees accrued prior to
 the date of disbarment

Rules: 8.3; N.Y. State Bar Ops. 480, 690, ;
 22 N.Y.C.R.R. §1022.27

QUESTION

May a lawyer share a portion of a legal fee with another lawyer who worked on the matter but has since been disbarred? Must a lawyer report conduct by the disbarred lawyer, prior to his disbarment, which the lawyer believes to be inappropriate?

OPINION

The division of fees among lawyers is governed, generally, by Rule 1.5 of the N.Y. Rules of Professional Conduct. The specific issue presented here, however, is addressed by the appellate courts as a matter of official rules and regulations. Court rules, and formal opinions of the New York State Bar Association, as well as courts of this state, have addressed directly the issue of fee sharing with a disbarred attorney. In the Fourth Department, the Rules of the Appellate Division provide that:

A disbarred...attorney...may be compensated on a quantum meruit basis for services rendered prior to the effective date of the disbarment.... The amount and manner of compensation shall be determined, on motion of the disbarred...attorney, by the court or agency where the action is pending.... The total amount of the legal fee shall not exceed the amount that the client would have owed if no substitution of counsel had been required.

22 N.Y.C.R.R. §1022.27. See also, New York State bar Association Opinion 690 (5/10/90).

As long as the disbarment was unrelated to the matter for which the fee was generated, the fees may properly be shared, as allocated by the court on motion, with a disbarred attorney for services performed prior to the date of the disbarment. See, *In Re Adams*, 42, A.D.3d 1 (2d dept, 2007); *Padilla v. Sansivieri*, 31 A.D.3d 64 (2d Dept, 2006)

As to the second inquiry, Rule 8.3 requires that

A lawyer who **knows** that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer **shall** report such **knowledge** to a tribunal or other authority empowered to investigate or act on such violation.

[emphasis added].

The question revolves around the quality of the lawyer's information rather than the conduct itself: actual knowledge of a violation must be reported; mere suspicion of a violation does not require reporting, but it would not be improper to do so. See *N.Y. Star Bar Op. 480 (1978)*. The fact that the lawyer is currently disbarred (and thus not now a "lawyer") does not render inapplicable the provisions of Rule 8.3, to the extent that the conduct under scrutiny occurred prior to the attorney's disbarment.

CONCLUSION

For the reasons set forth above, a lawyer may pay to a disbarred attorney a share, determined by the appropriate court on a basis of *quantum meruit*, of legal fees accrued prior to the date of the disbarment.. Depending on the character of the information concerning the disbarred lawyer's actions (whether "known" by the inquiring attorney, or merely "suspected", the attorney may be required - or permitted - to report such conduct to the appropriate governing body.
