

BAR ASSOCIATION OF ERIE COUNTY
COMMITTEE ON PROFESSIONAL ETHICS

Opinion 06-01

Topic : Division of fees among
lawyers.

Digest : A referral agreement
requires disclosure and
consent of the client and
joint responsibility for the
legal work by the referring
lawyer.

Code : DR 2-107

QUESTION

An opinion is requested as to whether or not a lawyer may pay a referral fee on a criminal appeal to another lawyer unaffiliated with receiving lawyer's firm. The lawyer submits that the referring lawyer has not performed any legal work or assumed any responsibility for the Appellate work to be performed.

OPINION

DR 2-107 controls in this instance. DR 2-107 provides: "A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of the lawyer's law firm, unless:

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 in proportion to the services performed by each lawyer, or by a writing given to the client, each lawyer assumes joint responsibility for the representation.

3. The total fee of the lawyers does not exceed reasonable compensation for all legal services they rendered the client.

In the instant case, it is submitted that the client was unaware of an arrangement between the referring and receiving attorney to divide the legal fee.

With respect to division of the work to be performed by each lawyer, it is submitted that the referring lawyer had “no expectation that he would do any work at all on the case”. In *Nicholson v. Nason & Cohen, P.C.*, 192 A.D.2d 473, 597 N.Y.S.2d 23 (1st Dept. 1993), the Court held: “To earn a share of the fee with a lawyer outside of his law firm, a lawyer must do more than merely recommend the other lawyer”.

Nassau County Bar Opinion 01-3 (2001) elaborates: “If a referring attorney has not actually worked on a case, he may not accept a referral fee from the referred client’s attorney unless he (the referring attorney) accepted ‘joint responsibility’ for the case”. The N.Y. County Lawyers’ Ass’n Op 715 (1996) notes further that a referring lawyer is “ethically obligated to accept vicarious liability for any act that occurs during the course of the representation. . .”.

In the instant case, the receiving lawyer states that the referring lawyer did not initially assume joint responsibility for handling the client’s criminal appeal. The receiving lawyer also submits that the referring lawyer did undertake attempts to communicate with the receiving lawyer and with the client relative to the status of the appeal.

CONCLUSION

A lawyer may not properly share a fee without disclosure and consent of the client. Further, a lawyer may not simply refer a matter to another lawyer without doing the work, unless the referring attorney assumes “joint responsibility” for the matter and the two lawyers together charge a reasonable total fee.