



THE IOWA STATE BAR ASSOCIATION
Committee on
Ethics and Practice Guidelines

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December 6, 2010

Mr. Dwight Dinkla
Executive Director
Iowa State Bar Association
625 East Court Avenue
Des Moines, IA 50309

Re: Ethics Opinion 10-04: Fee Splitting and Profit Sharing

Dear Mr. Dinkla,

In Ethics Opinion 10-03 we answered the question of whether a lawyer could form a business relationship with a non-law entity whose services are or could be viewed as being within the ambit of the practice of law. We stated:

It is our opinion that a lawyer may not establish a business relationship with a non-lawyer entity that provides services to the public which if provided by a lawyer would constitute the practice of law regardless of the fact that the non-lawyer entity is authorized to do so by governmental agency regulation. [ISBA Ethics Op. 10-03]

We are now asked to address the question: When may a lawyer share a percentage of a specific fee and/or general law firm profits with a non law entity? We divide the issue into two parts: specific fee sharing and generalized law firm profit sharing.

Specific Fee Sharing

We are asked to determine if a lawyer may share or split a fee with a non-lawyer income tax preparation service company which charges a percentage of the lawyer's fee for the use of its software.

For the purpose of this opinion we define a “fee” as the economic remuneration a lawyer receives from a client for the delivery of legal services. Fee, in this context, is controlled by Iowa R. of Prof'l Conduct 32:1.5. The sharing or splitting of fees is defined as dividing the specific fee between two or more individuals or entities. Fee sharing among lawyers who are not in the same law firm is specifically authorized by Rule 32:1.5(e) and Comment [7] thereto. However, fee sharing or splitting with a nonlawyer is not authorized. Rule 32:5.4 (a) states the general rule that:

a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that: ***

with exceptions that are not relevant at this time. We note that this is identical to the predecessor Iowa Code of Professional Responsibility DR 3-102(A).

Fee sharing or splitting with non-lawyers or law firms has arisen in a variety of situations and courts and ethics committees have uniformly found the practice to be prohibited under Model Rule of Professional Conduct 32:5.4. For example:

On-line legal directories or referral services: Ariz. Ethics Op. 99-06(1999); Md. Ethics Op. 01-03 (2001); S.C. Ethics Op. 00-10 (2000). See also Rogers, Cyberlawyers Must Chart Uncertain Course in World of Online Advice, ABA/BNA Lawyer's Manual on Professional Conduct, 16 Current Rep. 96 (2000).

Debt Collection Agencies: *In re Hear*, 755 N.E. 2d. 579 (Ind.2001) holding that a fee share between a lawyer and a debt collector violated rule 5.4(a); Conn, Ethics Op. 99-25 (1999); Mont. Ethics Op. 950411 (1995).

Investigators: *Duggins v Steak "N Shake, Inc*, 195 F. 3d. 828 (6th Cir 1999) where the federal court referred a lawyer to the state bar disciplinary board for fee splitting between lawyer and investigator; *People v Easley*, 956 P. 2d. 12576 (Colo. 1998) prohibiting sharing of legal fees with investigator and counselor in a sexual harassment case.

Consultants: *Son v. Margolius, Mallios, Davis, Rider & Tomar*, 709 A. 2d. 112 (Md., 1998) fee sharing between law firm and non-lawyer translator and client spokeswoman prohibited Rule 5.4(a); *In re Van Cura*, 504 N.W.2d. 610 (Wis.1993) holding it unethical for a law firm to agree to finance client's litigation with funds provided by non-law entity on the condition that the non-law entity would receive a percentage of the recovery. ABA Informal Ethics Op. 86-1519 (1986) to the effect that a lawyer may not share a fee with a business corporation for legal research and analysis services.

Ancillary Services: *In re Watley*, 802 So.2d.593 (La. 2001)A lawyer may not share a fee with a non-lawyer agency that provides secretarial and paralegal support services; *Attorney Grievance Comm'n v. Brennan*, 714 A. 2d. 157 (Md. 1988) prohibiting a lawyer from sharing a fee with a suspended lawyer who provided nonlegal services on cases.

Based on the above we are of the opinion that a lawyer or law firm's fee may not be shared or split with a non-law entity.

Consequently we are of the opinion that Rule 32:5.4(a) would prevent a lawyer from entering into an agreement to purchase a non-lawyer or law firm's services or product which is based on a percentage of the lawyer's fee.

Sharing of a law firm's profits.

We are asked to determine if a lawyer or law firm may enter into a commercial lease with a non-law entity which requires the firm to pay a percentage of its profits as rent. It is argued that such an arrangement would allow the law firm to enjoy lower overhead in times of economic downturn. The contrary is argued that such an arrangement would allow a non-law entity to directly profit from the practice of law and would result in law firm leasing to become a new form of commercial investment.

Lawyer or law firm's profit sharing differs from fee splitting. Fee splitting refers to the sharing of a specific fee whereas profit sharing is concerned with sharing the lawyer or law firm's general profits. While it is true that law firm profits result from the accumulation of individual fees minus expenses, the individual character or nature of the fee becomes amalgamated into the whole. The prohibition against fee splitting is founded upon the policy favoring lawyer independence. If a non-lawyer is entitled to a percentage of the lawyer's fee presumably the non-lawyer could assert some measure of control over the lawyer's decision-making process with regard to the case.

We note that Iowa R. of Prof'l Conduct 32:5.4 (a) specifically authorizes the sharing of fees, and by logical extension profits, between lawyers who are not in the same law firm. For example, lawyers from different firms may form a business relationship for shared services and all would be bound by Iowa R. of Prof'l Conduct 32:5.7. Accordingly the risk to lawyer independence would be avoided. Rule 32:5.7 [Comment 2].

Lawyer independence and outside interference with the lawyer's decision-making process regarding a specific case are not a material consideration with respect to profit sharing with a lawyer or law firm's employees. Rule 32:5.4(a)(3) specifically authorizes a lawyer or law firm to enter in profit sharing plan with its non-lawyer employees. But the rule is silent as to whether a lawyer or law firm may enter into a profit sharing arrangement with a non-lawyer who is not employed by the lawyer or law firm.

Iowa R. of Prof'l Conduct 32:5.4 (d) prohibits a lawyer from practicing law in an association if a non lawyer owns any interest in or is a corporate director or officer or has the right to direct or control the professional judgment of the lawyer.

By its very nature the right to a portion of a law firm's profits creates a financial interest in the law firm that is more dynamic than one based upon fixed debt. In essence it becomes a form of investment.

Not being otherwise bound by the Iowa Rules of Professional Conduct, a non-lawyer investor, desirous to see an increase in their own return, could exert control over the law firm's operations which would inevitably impact the lawyer's independent decision-making process in violation of Rule 32:1.7 (a)(2)

Consequently we are of the opinion that Rule 32:5.4(d) would prohibit a lawyer from entering into an agreement with a non-lawyer individual or entity whereby the lawyer or law firm pays a percentage of its profits in exchange for financing, products or other services.

For the Committee,

A handwritten signature in blue ink that reads "Nick Critelli". The signature is written in a cursive, slightly slanted style.

Nick Critelli

NC/eme