OHIO BOARD OF PROFESSIONAL CONDUCT

OPINION 2016-11
Issued December 9, 2016

Division of Fees By Lawyers Not in the Same Firm

***Syllabus of Opinion**:*

Lawyers who practice in association with each other, but not in a partnership, of counsel, or other permissible legal arrangement are not considered lawyers in the "same firm" for purposes of the division of fees under Prof.Cond.R. 1.5(e). Lawyers who informally practice in association with each other must comply with the restrictions contained in Prof.Cond.R. 1.5(e) when dividing fees.

Lawyers may divide fees in proportion to the services performed or by assuming joint responsibility for the matter. When lawyers who are not in the same firm agree to a division of legal fees, a written contingent fee agreement signed by the lawyers and the client under Prof.Cond.R. 1.5(c)(1) and the client's written consent to the division of fees under Prof.Cond.R. 1.5(e)(2) are required.

Each lawyer in a shared fee arrangement must give notice to the client as required by Prof.Cond.R. 1.4(c), if the lawyer does not maintain professional responsibility insurance in the amounts specified in the rule, or if the lawyer's insurance has been terminated.

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Withdraws Opinions 91-05, 2003-3

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SYLLABUS: Lawyers who practice in association with each other, but not in a partnership, of counsel, or other permissible legal arrangement are not considered lawyers in the "same firm" for purposes of the division of fees under Prof.Cond.R. 1.5(e). Lawyers who informally practice in association with each other must comply with the restrictions contained in Prof.Cond.R. 1.5(e) when dividing fees.

Lawyers may divide fees in proportion to the services performed or by assuming joint responsibility for the matter. When lawyers who are not in the same firm agree to a division of legal fees, a written contingent fee agreement signed by the lawyers and the client under Prof.Cond.R. 1.5(c)(1) and the client's written consent to the division of fees under Prof.Cond.R. 1.5(e)(2) are required.

Each lawyer in a shared fee arrangement must give notice to the client as required by Prof.Cond.R. 1.4(c), if the lawyer does not maintain professional responsibility insurance in the amounts specified in the rule, or if the lawyer's insurance has been terminated.

QUESTIONS PRESENTED[1]:

(1) Whether lawyers who practice in association with each other, but not in a partnership, of counsel, or other permissible legal relationship, would be considered lawyers in the "same firm" for purposes of the division of fees.

[1] The questions presented in this advisory opinion are the same or substantially similar to the questions presented in Adv.Op. 91-05 and Adv.Op. 2000-4.

(2) Whether lawyers not in the same firm agree to division of legal fees based upon shared responsibility, rather than on a proportion of services performed, are both required to sign a written agreement with the client.

(3) Whether each lawyer in an arrangement to divide fees is required to provide written notice of the lack of professional malpractice insurance.

APPLICABLE RULES: Prof.Cond.R. 1.0, 1.4, and 1.5.

OPINION: The requester is one of a group of nine attorneys who are not in a partnership or organized as a law firm, but who collectively operate an office in which each lawyer uses separate letterhead. The lawyers cooperate and assist each other in litigation matters and share fees based upon the proportion of work performed by each lawyer. Each client is advised of and introduced to all lawyers in the group who may be assisting in the case.

Prof.Cond.R. 1.5(e) expressly permits the division of a fee in a single billing between two lawyers not in the same firm, subject to certain conditions. The term "firm" is defined as "a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship, or other association authorized to practice law..." Prof.Cond.R. 1.0(c). A firm is different from an informal affiliation of solo practitioners who share office space or have agreed to share certain aspects of a law office. Adv.Op. 91-9. The practice arrangement described by the requesting attorney is not a firm as defined by Prof.Cond.R. 1.0(c), but an arrangement with lawyers separate from that of a firm. An "of counsel" relationship between a lawyer and a law firm is considered the "same firm."

Fees can be divided by lawyers not in the same firm only if four conditions are satisfied: 1) the division of fees is in proportion to the services performed by each lawyer or the lawyer assumes joint responsibility for the representation and agrees to be available for consultation with the client; 2) the client has given his or her written consent; 3) a written closing statement is signed by the client and each lawyer; and 4) the total fee is reasonable. Prof.Cond.R. 1.5(e). The Board recommends that each lawyer and client retain a copy of the completed document signed by all parties. *See also* R.C. 4705.15 (written fee agreement in contingent cases.)

A lawyer who does not maintain the required level of professional liability insurance must disclose this information and provide written notice to the client pursuant to Prof.Cond.R. 1.4(c). Consequently, each lawyer in a shared fee arrangement who does not maintain professional liability insurance in the minimum amounts provided in the rule must provide notice to the client. The notice must be signed by both the client and the lawyer. Even if a lawyer assumes joint responsibility for the representation, rather than performing legal services, the lawyer is subject to the notice requirement.

CONCLUSION: Lawyers who practice in association with other lawyers, but not in a partnership, of-counsel or other legal relationship, are not considered lawyers within the "same firm" and therefore must fully comply with the restrictions regarding division of fees contained within Prof.Cond.R. 1.5(e). Lawyers who agree to assume responsibility for the representation, or divide fees in proportion to the services rendered, must all sign the written fee agreement with the client and obtain the written consent of the client. If a lawyer dividing fees does not maintain malpractice insurance in the amounts specified in Prof.Cond.R. 1.4(c), the lawyer must provide the requisite written notice to the client.