

**THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 592**

January 2010

QUESTION PRESENTED

Under the Texas Disciplinary Rules of Professional Conduct, may a lawyer share or promise to share legal fees with a suspended lawyer?

STATEMENT OF FACTS

A was suspended from practicing law. While suspended, A referred a case to Lawyer B. A, B, and the client signed a referral agreement while A was suspended. B believed A to be licensed at the time the referral agreement was signed.

DISCUSSION

Rule 5.04(a) of the Texas Disciplinary Rules of Professional Conduct provides that "[a] lawyer or law firm shall not share or promise to share legal fees with a non-lawyer" except under circumstances not applicable here.

Although for certain purposes a lawyer suspended from the practice of law remains subject to the Texas Disciplinary Rules of Professional Conduct, a suspended lawyer is a "non-lawyer" for purposes of Rule 5.04(a). Thus, a Texas lawyer would violate Rule 5.04(a) by sharing or promising to share legal fees with a suspended lawyer. The referral agreement described here therefore violates Rule 5.04(a) and Lawyer B is prohibited from acting on the referral agreement. The Committee notes that the terms of the Rule apply without regard to the knowledge of the lawyers involved in the arrangement. Accordingly, on the facts presented, B violated Rule 5.04(a) when he entered into the agreement to share legal fees with A, a suspended lawyer, even if B reasonably believed that A was a lawyer in good standing at the time of the agreement. Although in these circumstances the entry into the agreement would be an unknowing and non-negligent violation on B's part, if B were to share legal fees pursuant to the terms of the agreement after B became aware of A's suspended status, such sharing of legal fees would constitute a knowing and deliberate violation. It is to be expected that the disciplinary consequences of the second violation should normally be greater than the disciplinary consequences if any of the first, innocent violation.

Professional Ethics Committee Opinion 568 (April 2006) addressed the situation in which a referral agreement was entered into before the referring lawyer was disbarred and before the fee became payable. The Opinion concluded that "a lawyer may share a contingent fee with a suspended or disbarred lawyer if the fee-sharing agreement existed before the suspension or

disbarment and the suspended or disbarred lawyer fully performed all work in the matter before the suspension or disbarment." Nevertheless, as Opinion 568 noted, the pure referral fee was abolished by amendments that added paragraphs (f) and (g) to Rule 1.04 effective March 1, 2005. Under Rule 1.04, fee sharing is permitted "between lawyers" not in the same firm provided the requirements of Rule 1.04(f) and (g) are met, including the requirement of Rule 1.04(f) that the division of fees either be made in proportion to the professional services performed by each lawyer or be based upon the lawyers' assumption of joint responsibility for the representation. Since A was suspended and hence cannot be treated as a lawyer for purposes of Rule 1.04(f) at the time the referral agreement between A and B was entered into, the agreement was not an agreement "between lawyers" and therefore it could not comply with Rule 1.04(f).

CONCLUSION

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer is prohibited from entering into an agreement to share legal fees with a lawyer who is suspended from the practice of law and from sharing legal fees with a suspended lawyer pursuant to such an agreement.