Opinion 503
June 1994
Tex. Comm. on Professional Ethics, Op. 503, V. 58 Tex. B.J. 632 (1995)

(92-7)

QUESTION PRESENTED

Whether the Texas affiliate of a national non-profit public interest law organization can require cooperating attorneys to share a portion or all of their fees collected in civil rights cases with the Texas affiliate?

STATEMENT OF FACTS

The Texas affiliate of a national non-profit public-interest law organization contracts with cooperating attorneys to handle referred civil rights cases. If the case involves substantial constitutional or civil rights issues, is likely to have precedential value and there is a strong probability of a favorable result through litigation the Texas affiliate will then accept the case and agree to pay all or most of the costs of the litigation and to provide the complainant with an attorney who will volunteer his or her services pro bono publico. The cooperating attorney agrees to share some or all of any attorney's fees earned in the case with the Texas affiliate, which maintains a separate fund into which these attorney's fees are deposited. This dedicated fund is used exclusively for litigation purposes.

DISCUSSION

The Texas Disciplinary Rules of Professional Conduct (hereinafter "the Rules") do not undertake to define the standards of civil liability of a lawyer's professional conduct, nor are they designed to be legal standards for procedural decisions.

This Committee does not, therefore, issue any opinion regarding the respective legal obligations and responsibilities of the parties, nor whether or not their fee sharing agreement is legally enforceable.

Rule 5.04 captures the ethical concerns raised by the fee-sharing arrangement under discussion. That rule prohibits an attorney or law firm from sharing or promising to share legal fees with a non-lawyer, subject to exceptions not applicable here.

Comment 1 to Rule 5.04 discloses that the principal reasons for the prohibition on fee sharing as expressed in the Rule codify traditional limitations on fee sharing, namely, preventing impermissible solicitation of cases and avoiding encouraging the unauthorized practice of law by non-lawyers. The paramount consideration is the protection of the integrity of the professional independence of the lawyer.

The Texas affiliate advances several arguments that Rule 5.04 is not violated by the fee-sharing arrangement; specifically (1) the retention of the fee is not profit within the meaning of the Rule; (2) the express policy of the Texas affiliate assures the professional independence of the lawyer; 3) the traditional limitations codified in Rule 5.04 are not offended by the protection and promotion of constitutional rights and civil rights by the Texas affiliate and 4) the clients are not exposed to excessive fees since all attorney fees are paid by the losing party.

It is the judgment of this Committee that Rule 5.04 cannot be construed to permit the fee sharing agreement between the affiliate organization and the cooperating attorney.

There is not an exception stated in Rule 5.04 descriptive of the relationship between the affiliate organization and the cooperating attorney.

CONCLUSION

A cooperating attorney ethically cannot agree to share legal fees with a non- profit public interest organization where the non-profit public interest organization has referred a case to the cooperating attorney and that attorney has been awarded attorney's fees by judgment or settlement.