

ETHICS ADVISORY PANEL
Opinion 92-52, Request #275
Issued August 12, 1992

An attorney seeks Panel advice regarding the division of a fee with another attorney. The attorney represents a client in a matter that was previously handled by a prior attorney. The prior attorney and the client did not have a fee agreement. When the file was given to the attorney, there was a lien on the file for services rendered by the prior attorney. The case was settled and the client objects to paying the former attorney. The client states that there was no agreement for fees and that the amount of the lien does not reflect the services rendered on the case. The attorney asks whether the prior attorney can be paid over the client's objections.

The Panel advises that Rule 1.5(e) addresses this issue specifically. It states that:

A division of a fee between lawyers who are not in the same firm may be made only if:

- (1) the division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation;
- (2) the client is advised of and does not object to the participation of all the lawyers involved; and
- (3) the total fee is reasonable.

According to the Rule stated above, a fee division may be made if the attorney had a written agreement with the client. From the facts supplied to the Panel, it appears that the client never consented to a fee division arrangement. In addition, the fees owed to the prior attorney are determined by quantum meruit, based on the work performed before termination. See Opinion #91-71. The Panel believes that the attorney should keep the fee amount in an escrow account until the dispute is resolved. If the fee dispute between the parties cannot be resolved, then the parties may need to seek the guidance from a tribunal. See Opinion #92-47.