

ETHICS ADVISORY PANEL
OPINION # 95-15, REQUEST # 574
Issued March 23, 1995

The inquiring attorney asks if a referral fee may be paid to a referring attorney who did not perform any legal work on the case and where there was no written agreement with the client regarding a referral fee.

Rule 1.5 entitled "Fees" states that an attorney's fee shall be reasonable. More specifically, Rule 1.5(e) addresses the division of a fee between attorneys. The Rule states:

(e) 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.

The comments to Rule 1.5(e) state that the Rule permits attorneys to divide a fee either based upon the proportion of services rendered or by written agreement with the client, if all lawyers assume responsibility for the representation.

Based upon the facts provided by the inquiring attorney, a division of the fee between attorneys not in the same firm may be made if the division is in proportion to work performed by each attorney or by a written agreement with the client and each attorney assumes joint responsibility for the representation of the client. In addition, the total fee must be reasonable.

In this case there is no indication of any services having been performed by the referring attorney, no written agreement with the client, and no joint responsibility for the representation. Therefore, any portion of the fee paid to the referring attorney would constitute a violation of Rule 1.5(e).