

Final

**RHODE ISLAND SUPREME COURT**  
**ETHICS ADVISORY PANEL**  
**Opinion No. 99-19, Request No. 789**  
**Issued November 18, 1999**

Facts:

The inquiring attorney, Attorney A, represents a client in a negligence matter that has been pending for nine and a half years. About four years into the representation, Attorney A was suspended from the practice of law for about eleven months. Attorney A states that as a result of the suspension, Attorney A arranged for Attorney B "to take over this case on a 50/50 fee-sharing basis" with the understanding that if the case proceeded to trial, Attorney C would be engaged as trial counsel, and that Attorney C would be paid out of the fees of Attorney A and Attorney B.

Attorney A further states that he/she provided several hundred hours of legal services for litigation, trial preparation, and research prior to the suspension. After he/she was reinstated to the practice of law, Attorney A continued to provide these services, retained Attorney C, paid Attorney C weekly, paid all trial expenses and experts, and together with Attorney B and Attorney C, has recently defended the appeal from a judgment in favor of the client, who was awarded a substantial verdict at the trial.

Issue Presented:

Attorney A asks whether he/she is entitled to fifty percent of the fee.

Opinion:

Rule 1.5(e) permits the lawyers in this inquiry to divide the fee either on the basis of the proportion of services they rendered or on some other basis, such as the arrangement described, by written agreement between the lawyers and the client if each lawyer assumes responsibility for the representation.

Reasoning:

Rule 1.5(e) 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.

In general, a disbarred or suspended attorney is entitled to be compensated for the reasonable value of the services he/she provided prior to the suspension or disbarment. See R.I. Sup. Ct. Ethics Advisory Panel No. 92-87 (1992). In Ethics Advisory Panel Op. 98-14, the Panel stated that the attorney in that inquiry and a disbarred attorney could not "split" a contingent fee under their 50-50 arrangement unless each attorney provided one-half the services. See R.I. Sup. Ct. Ethics Advisory Panel No. 98-14 (1998). The Panel reasoned that a disbarred attorney cannot assume the continued responsibility required by the provision of the rule which permits fee-sharing that is not based on the proportion of services rendered. Id.

Based on the facts as presented by Attorney A, the instant case is distinguishable. Attorney A was suspended for a brief period relative to the nine-and-a-half year pendency of the case. Additionally, Attorney A was reinstated to the practice of law and, together with Attorney B and Attorney C, resumed the representation of the client for approximately five years thereafter.

The Panel concludes that the fee arrangement described in this inquiry would be permissible on these facts, provided that there is a written agreement between the lawyers and the client regarding the division of fees. In the absence of a written agreement, Attorney A is entitled to be compensated for the reasonable value of the services he/she rendered in the case.

The Panel's jurisdiction is limited to advising the inquiring attorney about whether the proposed fee arrangement is permissible under the Rules of Professional Conduct. The Panel is without jurisdiction to decide whether Attorney A is entitled as a matter of law to fifty percent of the fee.