



STATE BAR OF NEVADA
STANDING COMMITTEE ON
ETHICS AND PROFESSIONAL RESPONSIBILITY

Summary of Formal Opinion No. 51
Issued on August 18, 2014

BACKGROUND

The Committee received a request from a practicing attorney regarding ethical and legal obligations arising when fees are paid by a third party on behalf of a client. The hypothetical and questions presented are as follows:

Lawyer A has been retained to represent Defendant 1 and Defendant 2, who are co-defendants in a criminal drug case. Both clients have signed conflict waivers allowing Lawyer A to represent them. A potential third defendant, Defendant 3, will be added to the cases via a superseding indictment. Lawyer B has been retained to represent Defendant 3. Defendants 1, 2 and 3 are all related to each other and their mutual family is paying the legal fees.

Recently, Lawyer A has received from an unknown/anonymous source a cash payment of \$29,000 dropped off at his/her office related to Defendants 1, 2 and 3.

Questions Presented:

Question 1a: Does receiving the payment from an unknown/anonymous source have an effect on ethical and legal considerations Lawyer A has for reporting these funds as income?

Question 1b: Does the form of payment in cash affect how the income is reported?

Question 2a: Under what scenarios could Lawyer A give Lawyer B a portion of these funds as payment for services rendered to Defendant 3?

Question 2b: How does Lawyer A apportion the payment when Lawyer A has reason to believe a portion of the funds are for the services of Lawyer B?

Question 2c: How does the answer to Question 2 affect the ethical and legal considerations posited in Question 1?

Question 3: Are there any other ethical or legal considerations Lawyer A should be aware of under these facts?

Short Answers:

Answer No. 1a: Yes. Nevada Rule of Professional Conduct (“NRPC”) 1.8(f) places restrictions on a lawyer accepting compensation to represent more than one client. Even if both Defendants 1 and 2 give their informed consent to Lawyer A to accept the compensation from the anonymous source, the funds create a conflict of interest because the funds are not solely for Defendant 1 and 2 but also purportedly for Defendant 3, who is not represented by Lawyer A. Additionally, utilization of the funds by Lawyer A may result in the disclosure of confidential information.

Answer No. 1b: Yes. Receiving over \$10,000 in a lump sum for legal services must be reported to the Internal Revenue Service (“IRS”) in accordance with IRS Form 8300. Additionally, the payment itself, raises ethical considerations pursuant to NRPC 1.6 which may require reasonable diligence on behalf of Lawyer A to determine the source of the payment and to report to the IRS and Federal Bureau of Investigation (“FBI”) the receipt of suspicious compensation.

Answer No. 2a: Although the NRPC does not expressly address this situation, NRPC 1.5(e)(2-3) permit lawyers of different firms to split fees for representing the same client(s) when the client(s) are informed in writing of the lawyers’ arrangement, the division is explicit in writing, the clients agree in writing to the division and the entire fee is reasonable. Likewise, in the spirit of NRPC 1.5(e)(2-3), Lawyer A and Lawyer B could give a portion of the funds to Defendant 3 only if all Defendants agree in writing with the division, they are informed in writing of the division, and the division is fair to all Defendants.

Answer No. 2b: NRPC 1.5(e) requires Lawyer A to safeguard the \$29,000 until a resolution is reached between Defendant 1, Defendant 2 and Defendant 3 on how to apportion the funds.

Answer No. 2c: In addition to the legal and ethical obligations imposed by the receipt of the funds as discussed in Answer No. 1a, apportioning the funds creates an additional ethical obligation to safeguard the property until the clients reach an agreement as to how the funds for legal representation should be spent.

Answer No. 3: In addition to aforementioned legal and ethical considerations imposed by the receipt of the funds, Lawyer A must keep in mind NRPC 8.4(e), which prohibits Lawyer A from engaging in dishonest, fraudulent or deceitful conduct. Additionally, NRPC 4.2 prohibits Lawyer A from actually discussing the payment with Defendant 3 as he is represented by Lawyer B.

This opinion is issued by the Standing Committee on Ethics and Professional Responsibility of the State Bar of Nevada, pursuant to S.C.R. 225. It is

advisory only. It is not binding upon the courts, the State Bar of Nevada, its Board of Governors, any person or tribunal charged with regulatory responsibilities, or any member of the State Bar.