

LOS ANGELES COUNTY BAR ASSOCIATION

ETHICS COMMITTEE

FORMAL OPINION NO. 457

(November 20, 1989)

COMPENSATION OF NON-ATTORNEY STAFF BASED ON WORK QUALITY: A lawyer may pay a paralegal a bonus when the bonus is not paid as a percentage of the lawyer's fees, it is not bargained for based on the fee the lawyer is to receive in a particular case, the paralegal has no expectation of receiving such a bonus and the bonus is paid as compensation for the paralegal's productivity and performance based on the lawyer's subjective assessment.

AUTHORITIES CITED:

California Rule of Professional Conduct, Rule 1-320; Cain v. Burns, 131 Cal. App. 2d 439 (1955); Gassman v. State Bar, 18 Cal. 3d 125 (1976)

FACTS

An attorney has proposed supplementing the compensation of his probate paralegal with occasional bonuses. The attorney is compensated for all the work performed by the probate paralegal as part of the statutory probate fee. The probate paralegal is compensated by the attorney according to a regular hourly rate. On an occasional basis, when the probate paralegal has been particularly productive on a case or a series of cases, the attorney wishes to reward the paralegal with a bonus.

The bonus is not bargained for based on the attorney's fee in a particular case. There is no set amount nor is it a fixed percentage of the statutory fee. The paralegal has no expectation of a bonus while working on a particular case. The

bonus is not necessarily related to the work performed in any particular case. The bonus does not comprise the majority of the paralegal's compensation.

The attorney inquires as to whether this arrangement would violate the prohibition against sharing legal fees with a lay person.

#### DISCUSSION

The limitations on the compensation of non-lawyers by a bar member are found in Rule 1-320 of the Rules of Professional Conduct. The rule prohibits a member or a law firm from directly or indirectly sharing legal fees "with a person or entity not licensed to practice law." Rule 1-320(A). The rule contains the following exception:

(3) A member or law firm may include non-member employees in a compensation, profit sharing, or retirement plan even though the plan is based in whole or in part on a profit sharing arrangement, if such plan does not circumvent these rules or Business and Professions Code Section 6000, et seq.

Taken together, the rules allow a member to compensate non-lawyers provided that the compensation does not involve the direct sharing of fees. Several decisions illustrate this conclusion.

In Cain v. Burns, 131 Cal. App. 2d 439 (1955), the court held that an agreement between a lawyer and insurance adjuster providing for the adjuster to receive an amount equal to one-

third of the lawyer's net fees in certain cases violated the prohibition on fee splitting. In Gassman v. State Bar, 18 Cal. 3d 125 (1976), the court upheld discipline of lawyer for entering into an agreement to pay a paralegal twenty percent of the attorney's legal fee in those cases in which the paralegal participated.

The Committee finds that the bonus described above is a system of compensation that falls within the exception to Rule 1-320. Unlike the arrangements in Cain and Gassman, the bonus here is not paid as a percentage of the lawyer's fees. The bonus is not bargained for based on the fee the lawyer is to receive in a particular case and the paralegal has no expectation of receiving such a bonus. Instead, the bonus is paid as compensation for the paralegal's productivity and performance based solely on the lawyer's subjective assessment<sup>1/</sup>.

This opinion is advisory only. The Committee acts only on specific questions submitted ex parte, and the opinions are based solely on the facts set forth and the questions presented.

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<sup>1/</sup> The bonus could be paid based on the paralegal's performance or productivity in a single matter so long as it meets the criteria specified in this opinion.