

LOS ANGELES COUNTY BAR ASSOCIATION

ETHICS COMMITTEE

FORMAL OPINION NO. 461

DIVISION OF FEES WITH A NON-LAWYER---REPRESENTING CLIENTS WITH CONFLICTING INTERESTS: An arrangement between a property management firm and its clients whereby the firm recoups from the clients part of the cost of a law office which the firm provides free of charge for a lawyer who renders legal services to both the firm and its clients at a reduced hourly rate is not in itself a fee splitting device prohibited by the Rules of Professional Conduct, even though the apportionment of the law office cost among the clients is based on the amount of time the lawyer works for each, provided that charges to the clients are solely for reimbursement of the management firm and not a disguised surcharge on the lawyer's time. The lawyer's concurrent representation of the property management firm and its clients is ethically permissible provided that the interests of the firm and its clients are not conflicting.

AUTHORITIES CITED: California Rules of Professional Conduct 1-320 3-310(B), former Rule 3-102. L.A. County Bar Association Opinion No. 431. California State Bar Association Opinion No. 1981-60.

A lawyer asks whether there is any violation of the Rules of Professional Conduct in the following described arrangement.

A property management firm (M) provides lawyer (L) with an office and related services including receptionist, telephone, photocopy and fax without charge. In return L does M's legal work at an hourly rate which is less than the rate L customarily charges other clients. M is the general partner of a number of limited partnerships engaged in the buying, leasing and selling of property, for which L also does legal work at the same reduced hourly rate.

M proposed that each limited partnerships reimburse M for a proportionate part of the cost of L's office and that the apportionment be made by charging each partnership a certain dollar amount for every hour L spends providing legal services to the particular partnership. This sharing of expense was to be solely for the purpose of reimbursement of M. It is clearly implied though not expressly stated by the inquiring attorney that the total payable by the partnerships would not include the cost of L's office attributable to time spent by L on M's legal matters. In answering the inquiry, we assume that this is true.

The limited partnerships agreed to the arrangement proposed by M. L is independent of M and has not personally entered into any arrangements with it for the provision of legal services to others.

The questions that arise are (1) whether M's recoupment of part of L's office cost by charging the limited partnerships ac-

ording to the amount of time L works for each is an improper sharing of legal fees with a non-lawyer, and (2) whether L is improperly representing conflicting interests.

Rule 1-320 provides that a member of the State Bar shall not directly or indirectly share legal fees with a person or entity not licensed to practice law. In our Opinion No. 431 we considered a fact situation where a business management firm retained a law firm on behalf of its clients. When the law firm did legal work for a business firm client it billed the client at a fixed hourly rate. The business management firm, which was primarily responsible for payment of the legal fees under the retainer agreement, then added twenty per cent of the bill to the client's account as a fee for itself. While not part of any understanding or agreement, this practice was known to the law firm.

The Opinion states: "The 20% fee override that Business Manager will receive based solely on the number of service hours rendered by Law Firm to the clients is a clear case of fee splitting in violation of Rule 3-102." The present Rule 1-320 is the same as former Rule 3-102.

In California State Bar Opinion No. 1981-60 the Committee considered the case where a lawyer member of a service exchange would provide legal services to other exchange members charging his customary fee which was then entered on the books of the exchange as a credit. The attorney could use the credit to buy goods or services from other members of the exchange but was required to pay eight percent of the cost of the purchase to the

exchange. This arrangement also was condemned as a fee splitting device in violation of Rule 3-102.

The fee paying arrangements outlined in both these opinions can be distinguished from the arrangement involving M, L and the limited partnerships in that in both cases there was a contractual agreement between the lawyer and the lay intermediary for the provision of legal services to its clients or members. Furthermore both of the arrangements condemned as fee splitting devices were designed to allow the lay intermediary to profit from the lawyer's or law firm's work. The rationale of M's proposal to charge the limited partnerships is not to profit from L's services but to apportion fairly the overhead expense of L's office from which the partnerships are benefiting by receiving legal services at a reduced rate. Assuming that M and the partnerships have non-conflicting interests the situation is essentially the same as where several persons retain a lawyer to represent them in a common enterprise and share in the payment of the fee according to the amount of work the lawyer does for each.

This last assumption is, of course, critical in determining the ethical propriety of the entire arrangement. Rule 3-310 (B) provides that a lawyer shall not concurrently represent clients whose interests conflict, except with their informed written consent.

If the purposes, practices and business goals of both M and all the limited partnerships are to profit from real estate investments and not from one another or at one another's expense it

cannot be said that their interests conflict so as to invoke the rule. We do not, however, have sufficient information to determine that this is true. If the interests are conflicting, it is unlikely that the partnerships can give a free and fully informed consent through their general partner whose individual interests are adverse to theirs. Without such consent L then could not ethically represent both parties, and the question of the fee arrangement becomes moot.

Assuming that there is no conflict of interest, we conclude that the arrangement is consistent with L's ethical obligations.

This opinion is advisory only. The committee acts only on specific questions submitted ex parte, and its opinions are based only on the facts set forth in the questions submitted.