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Gone But Not Forgotten

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Lawyers who are not in the same firm may share fees when they work jointly on a case. However, such arrangements are governed by M.R.P.C. 4-1.5(e)-Fees, which states:

"A division of 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 obligation to proceed under this rule can often be overlooked in situations where a lawyer leaves a firm and takes clients with her in the process.

In such circumstances, lawyers still at the firm and the leaving-lawyer may not appreciate the application of the rule because they simply don't see themselves as now being "lawyers who are not in the firm" for fee sharing purposes. After all, they were in the same firm when the case was accepted. However, for purposes of a division of the fee, the leaving-lawyer and the firm are now separate entities. The rule may also be overlooked when there is a prior agreement between the leaving-lawyer and the firm addressing the division of fees. This issue is often dealt with in partnership agreements, for example, and the firm and the leaving-lawyer may assume the agreement controls in the situation. However, the terms of such an agreement are not enforceable absent compliance with Rule 4-1.5(e).

The Office of Chief Disciplinary Counsel addressed these issues in Informal Opinions 20020003 and 20000219. In Opinion 20020003, there was a prior written agreement between partners in a firm that fees would be divided 50/50 between the firm and the leaving-lawyer and there was no objection to this division by either the firm or the leaving-lawyer. The O.C.D.C. stated such an "...arrangement would not be under the proportionality approach to [Rule 4-1.5(e)]. Therefore, it would be necessary for the firm and the departing attorney to comply with the requirement that 'by written agreement with the client, each lawyer assumes joint responsibility for the representation.' The joint responsibility includes all forms of professional responsibility for the representation."

In Opinion 20000219, the leaving-lawyer objected to the firm asserting a lien of 1/3 on cases for clients that had started with the firm but then chose to go with the leaving-lawyer. The O.C.D.C. stated, "[U]nder Rule 4-1.5(e), the fees may be shared in proportion to the work performed on each case while [the] Attorney was a member of the firm." And in fact, because there was apparently no written agreement with the client, a proportionate fee division would presumably be the only way the fees could be shared.

A further consideration arises when the anticipated recovery is in the form of a contingency fee. When a lawyer leaves a firm and the client chooses to go with the leaving-lawyer, the firm is effectively discharged by the client prior to the occurrence of the contingency. Therefore, absent a written fee sharing agreement with the client for a disproportionate split, the firm's recovery can only be in quantum meruit. *International Materials Corp. v. Sun Corp., Inc.*, 824 S.W.2d 890 at 896 (Mo. 1992). ("Once termination of the lawyer-client relationship has occurred before completion of a contingent fee contract, the lawyers' only recovery could be in quantum meruit for benefits conferred.")

When a lawyer leaves a firm and takes clients with her, the issue of sharing in the fees needs to be resolved in accordance with Rule 4-1.5(e). This requires that if the fee is to be shared in a non-proportionate split, there must be a written agreement with the client. However, in circumstances where the recovery is a contingent fee and no written agreement to divide the fee is made with the client, the firm is limited to recovering only the quantum meruit value of the leaving-lawyer's services to the client while still at the firm, in relation to the client's ultimate recovery.