

ETHICS ADVISORY OPINION

14-01

UPON THE REQUEST OF A MEMBER OF THE SOUTH CAROLINA BAR, THE ETHICS ADVISORY COMMITTEE HAS RENDERED THIS OPINION ON THE ETHICAL PROPRIETY OF THE INQUIRER'S CONTEMPLATED CONDUCT. THIS COMMITTEE HAS NO DISCIPLINARY AUTHORITY. LAWYER DISCIPLINE IS ADMINISTERED SOLELY BY THE SOUTH CAROLINA SUPREME COURT THROUGH ITS COMMISSION ON LAWYER CONDUCT.

Factual Background:

A potential client paid a fee to a group called XYZ that acts as an attorney matching service for family court matters. In return, XYZ will pay \$800, plus filing fees, for an attorney to consult with the client, prepare pleadings, and attend one hearing. Thereafter, the attorney is to bill the client at his/her normal hourly rate. The attorney knows, before taking the case, that the matter will require legal services to the client beyond those paid for by XYZ. The typical retainer for the kind of legal services requested by the client is \$ 2,500.00.

XYZ requires that the attorney sign a contract for services that includes a clause that prevents discussing the particulars of the agreement, including payment, between attorney and XYZ.

Questions:

1. Is it possible to craft a fee agreement that adequately informs the client without violating the contract referenced above?
2. Can the attorney honor the duty of loyalty and still comply with the contract from XYZ?
3. Would this arrangement involve impermissible fee splitting?

Summary:

Rule 1.8(f) and the comments following the rule prevent the attorney from entering into this arrangement. It is unnecessary to specifically address each question since the requirements of Rule 1.8(f) cannot be met under the contractual restrictions required by XYZ.

Opinion:

Rule 1.8(f) of the Rules of Professional Conduct sets forth the conditions under which a lawyer can accept compensation for representation from someone other than the client. In order to

accept compensation from someone other than the client, the client must give informed consent, the lawyer's professional judgment must not be compromised, and the information relating to the representation of the client must be protected as required by Rule 1.6.

Rule 1.8(f) requires the lawyer to obtain informed consent from the client to proceed with a scenario in which a third party pays the attorney's fee. Since the contract between XYZ and the lawyer prohibits the lawyer from disclosing the amount paid to the lawyer by XYZ, the lawyer is unable to obtain the client's informed consent. Comment 12 to Rule 1.8 also suggests that these fee arrangements may create a conflict of interest prohibited by Rule 1.7. By signing the contract with XYZ, the attorney places at risk the duty to the client (informed consent) and his own personal interests (contractual obligations to XYZ).

As Rule 1.8(f) and Rule 1.7 appear to prohibit this type of contractual arrangement, the Committee finds no need to respond to the specific inquiries.