

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

FORMAL ETHICS OPINION 83-F-50

Inquiry is made concerning the propriety of employing a suspended attorney in a non-legal capacity; and, the propriety of dividing an attorney fee with a suspended attorney.

Attorney A, duly licensed, associates Attorney B to assist in the preparation and trial of a personal injury lawsuit. The fee agreement with the client B is on a contingency basis. The two attorneys agree that the fee will be divided, taking into account the time spent by each of them, the expertise, experience and responsibilities in the case. Attorney A has done considerable work on the case prior to associating Attorney B. After the association, Attorney B does the bulk of the work, files, prepares and tries the lawsuit resulting in a verdict. At the time the judgment is paid and the fee is to be divided, Attorney A has been suspended from practice.

Attorney B inquires, if the suspended attorney performs non-legal, clerical or investigative services on the case, may he be compensated for such work by a division of the fee; and, is it ethical to divide a fee in a contingency case with an attorney who has been suspended from practice?

It appears from the facts that the suspension of the attorney occurred after the verdict was rendered and before the judgment was paid and, therefore, there would be little likelihood for the performance of clerical or investigative services on the case. However, assuming arguendo, that the suspension occurred earlier, and in any event, it is improper for an attorney to employ a suspended or disbarred attorney in a non-legal capacity. See ABA Informal Opinion 1434. The suspended or disbarred attorney is to refrain from the practice of law in any form, either as principal, agent, clerk, employee or paralegal of another. A synopsis of unpublished ABA Informal Opinion 7 states:

An attorney should not employ a disbarred lawyer, even to do only office work and seeing no clients, because of the practical difficulty of confining his activities to an area which does not include practice of law, and because such employment would show disrespect to the courts (found at page 134 of the ABA Opinions on Professional Ethics, 1967 edition).

Disciplinary Rule 3-102 of the Code of Professional Responsibility prohibits an attorney from dividing a legal fee with a non-lawyer. Disciplinary Rule 2-107 provides that all divisions of fees among attorneys must be based solely on the division of services, responsibility and work performed; and, only with the consent of the client to employment of the other attorney after a full disclosure that a division of fees will be made.

Therefore, there is no impropriety in dividing an attorney fee with a suspended attorney based solely on the work performed and responsibility

assumed prior to his suspension, provided there was informed consent of the client at the time of the association.

This 12th day of August, 1983.

ETHICS COMMITTEE:

Edwin C. Townsend

W. J. Flippin

Henry H. Hancock

APPROVED AND ADOPTED BY THE BOARD