

**Ethics Board Opinion
06-01**

The following opinion of the Ethics Board of the National Federation of Paralegal Associations, Inc. (NFPA) is offered based upon NFPA's positions and research in the area of paralegal ethics and discussion and research by the members of the Ethics Board. This opinion should not be construed as binding and must be interpreted in conjunction with the applicable state's Supreme Court rules and opinions governing the professional conduct of members of the legal profession.

QUESTION: Paralegal can refer business to his/her firm. What means of compensation are ethical for the firm to offer, and what means of compensation may the Paralegal accept, in the event the potential clients retain the firm?

OPINION: This question is similar to the question and our published opinion 05-03 Fees issued in December 2005. In that respect the Ethics Board opines that it is unethical for an attorney or a firm to provide to non-attorney fees for recommending clients. However, as the Ethics Board stated in its 05-03 opinion, it may be permissible for the firm or attorney to provide a bonus to the non-lawyer for their work on the file.

DISCUSSION: The ABA Model Rule 7.2(c) states:

“A lawyer shall not give anything of value to a person for recommending the lawyer’s services except that the lawyer may

(1) pay the reasonable costs of advertisements or communications permitting by this Rule;

(2) pay the usual charges of a not-for-profit lawyer referral service or legal service organization; and

(3) pay for a law practice in accordance with Rule 1.17.”

(Rule 1.17 relates to the purchase of a law practice, allowing a lawyer to pay the estate of a deceased attorney)

Oregon has a similar rule, Rule 7.2, as follows:

(a) A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer’s or law firm’s services. **A lawyer may not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) of Rule 1.17.”**

The Illinois Judicial Ethics Committee issued Ethics Opinion 01-05 (January 2002):

The Committee stated that it would violate Rules 5.4(a) and 7.2(b) for a lawyer to pay a non-lawyer authorized to represent claimants in cases before the Social Security

Administration a referral fee for his/her involvement in the lawyer's representation of such claimants before the Social Security Administration. Likewise, in ISBA Opinion No. 94-08, this Committee found that it would be professionally improper for a lawyer who receives property assessment matters from a non-lawyer "tax representative" to pay the non-lawyer a referral fee.

Thus, the Committee believes it would be professionally improper for the "Mediation Firm," to pay a referral fee to the accounting firm, a non-lawyer. The fact that the "Mediation Firm," rather than the Law Firm, would have the referral relationship with the non-lawyer accounting firm does not render Rules 5.4(a) and 7.2(b) inapplicable. There would still be lawyers sharing legal fees with a non-lawyer, and giving something of value to a person for recommending the lawyer's services, in violation of both of these Rules.

In the above cited Illinois matter a reprimand was recommended as the sanction for attorneys who paid referral fees to clients who referred cases to their law firm. 96 Ill.Atty.Reg. & Disc.Comm. CH 838, 839, 841, 842.

Alabama prohibits the use of fee splitting and states it case as follows:

Rule 5.4 of the Rules of Professional Conduct of the Alabama State Bar prohibits a lawyer from splitting a legal fee with a non-lawyer; however, you may pay a non-lawyer for services rendered to the lawyer. You may not under any circumstances compensate, from any source, a non-lawyer for soliciting or referring clients to the lawyer. Consequently, it is the view of the Disciplinary Commission that no rule of professional conduct is violated if you compensate Mr. Doe for advice and assistance in obtaining a qualified appraisal expert and other services performed during the course of the litigation. You may not, however, compensate Mr. Doe for recommending that several XYZ stockholders contact your firm with a view to engaging your firm.

Alabama goes on to cite ABA Rule 5.4

Put more simply, the rule prohibits "the possibility of control by the lay person, interested in his own profit, rather than the client's fate" *Gassman v. State Bar of California*, 553 P.2d 1147, 1151 (Cal. 1976). Another purpose is to discourage laypersons from engaging in the unauthorized practice of law. The rule also clearly prevents a lawyer from agreeing to pay a non-lawyer for referring clients to the lawyer. In *Florida State Bar v. Sagrans*, 388 So.2d 1040 (Fla. 1980), a lawyer was disciplined for violating Rule 5.4 when he agreed to compensate a chiropractor for medical malpractice cases referred to him. ABA Informal Opinion 86-1519 also points out that:

"While a lawyer may employ a non-lawyer to provide services, payment for such services may not be based on a percentage of the lawyer's fee in the matter with respect to which the non-lawyer's services are rendered. Payment on the basis of a percentage of the

lawyer's fee has long been considered a sharing of fees in violation of the applicable rules. See Formal Opinion 48 (1931)." (supra at page 2)

By making a request to the National Federation of Paralegal Associations (NFPA) for an opinion and/or recommendation concerning proper conduct for a member of the legal profession as it pertains to ethical conduct, obligations, utilization and/or discipline of paralegals, the inquirer and his/her employers, employees, agents, and representatives agree to indemnify, hold harmless, and defend the NFPA, its Officers, Directors, Coordinators, Ethics Board and Managing Director from any claims arising from any act or omission of NFPA except those occasioned by NFPA's willful or deliberate acts.