

AO 1984-85/19

NEW HAMPSHIRE BAR ASSOCIATION
Ethics Committee Advisory Opinion 1984-85/19
Out-of-State Counsel: New Hampshire Practice/Fee Splitting
April 9, 1985

RULE REFERENCES:

- *Rule 1.5
- *Rules 7.1-7.5

SUBJECTS:

- *Advertising
- *Division of Fees

CODE REFERENCES:

- *DR2-101
- *DR2-102
- *DR2-106
- *DR2-107
- *EC2-18
- *EC2-22

COURT RULES:

- *Superior Court Rule 19
- *U.S.D.C.-N.H. Local Rule 5

ANNOTATIONS:

Fee division between New Hampshire attorney and out-of-state attorney must be in proportion to the services performed and responsibility assumed by each, and total fee must be reasonable. (Rule 1.5)

The Committee declined to comment on proposed advertisement. (Rules 7.1-7.5)

QUESTION:

The inquiring attorney is a member of the New York and Massachusetts Bars, but is not admitted in New Hampshire. He wishes to associate with New Hampshire counsel in bringing toxic tort cases in New Hampshire. He would split his fee with New Hampshire counsel based upon the work each expected to do on the case. He has submitted a proposed newspaper advertisement.

RESPONSE:

- 1) Practice by out-of-state counsel: Practice in New Hampshire courts by an attorney who is not admitted to the New Hampshire Bar is not an ethical question. It is governed by New Hampshire Superior Court Rule 19 and Local Rule 5 of the United States District Court for the District of New Hampshire. Both rules require association with New Hampshire counsel, who is normally required to be present for all court proceedings.
- 2) Fee-splitting: The fee arrangements between the New Hampshire counsel and the inquiring attorney are controlled by DR 2-107 (EC 2-22) which requires that the division be in proportion to the services performed and responsibility assumed by each attorney and that the total fee must be reasonable. See also DR 2-106, EC 2-18. The Committee's answer would not be different under the Proposed New Hampshire Rules of Professional Conduct, Rule 1.5.
- 3) Advertisement: The Committee is not in a position to comment whether the proposed advertisement falls within the guidelines of DR 2-101 and 2-102. See also Proposed New Hampshire Rules of Professional Conduct 7.1 through 7.5.