

NEW HAMPSHIRE BAR ASSOCIATION
Ethics Committee Formal Opinion #1988-89/17
Fee Arrangements: Union Charge for Case Settlement Services - Workers' Compensation
May 11, 1989

RULE REFERENCES:

- *Rule 1.5
- *Rule 1.6
- *Rule 1.8(8)
- *Rule 5.4(a)

SUBJECTS:

- *Adverse Effect on Professional Judgment
- *Confidentiality
- *Corporations
- *Division of Fees
- *Fees
- *Pre-Paid Legal Services

ANNOTATION:

A labor union may not permissibly bill its members for representation in worker's compensation settlements.

A lawyer employee of a corporation should not permit the corporation to bill for the lawyer's services in the corporate name (Rule 5.4(a)).

A lawyer or law firm shall not share legal fees with a non-lawyer, with certain exceptions. (Rule 5.4(a)).

A pre-paid legal service program is permissible as long as the total paid by the client under the pre-paid plan is not clearly excessive, the lawyer's independence of professional judgment is maintained, and client confidentiality is maintained. (Rule 1.5; Rule 1.8(8); Rule 1.6).

QUESTION:

Whether a labor union which offers representation in Worker's Compensation Claims may charge its members up to 15% for representation in settlement of workers compensation cases?

RESPONSE:

For the reasons stated below, the Ethics Committee believes that the proposed arrangement would violate the Rules of Professional Conduct.

For the purposes of this opinion, the Committee assumes that an attorney hired or employed by the union is actually representing the clients. (Any other arrangement might involve the unauthorized practice of law and questions regarding this issue should be directed to the Unauthorized Practice of Law Committee). In NH Op 82-3/21 the Committee was of the opinion that a lawyer employee of a corporation should not permit the corporation to bill for the lawyer's services in the corporate name. While this opinion was rendered under the old code, it is unlikely that the result would be any different under the Rules of Professional Conduct, see ABA Standing Committee on Ethics and Professional Responsibility, Informal Opinion 86-1519, (4/18/86).

Rule 5.4(a) says "A Lawyer or law firm shall not share legal fees with a non-lawyer..." with three exceptions that do not apply to the present situation.

If the service of representation was furnished as part of a pre-paid legal service program, it would be permissible as long as the total paid by the client under the pre-paid plan was not clearly excessive (Rule 1.5) and the independence of the lawyer's professional judgment (Rule 1.8 (8)) and client confidentiality (Rule 1.6) are maintained, BNA, *Formal Professional Conduct* sec. 901:111, 114 (12/14/87). However, the inquiry did not involve a pre-paid legal service plan, but an arrangement in which a non-lawyer, i.e. the union, proposes to provide legal services and charge a legal fee afterwards.