

## OPINION 526

May 1998

### Question Presented

May a law firm, which has received court-awarded attorneys' fees for representing several members of a plaintiff class in a successful attempt to modify the terms of a class-action settlement agreement, distribute to the represented members of the class a portion of the fee awarded?

### Statement of Facts

Several businesses, which were members of a plaintiff class in a class action, were represented, separately from the class, by a law firm retained by the businesses to investigate the fairness to these businesses of a proposed settlement of the class action. A written retainer agreement between the law firm and the represented businesses stated that the clients would not share in any court-awarded attorneys' fees in the case. The law firm did not represent the class as a whole. The businesses were not owned by lawyers.

After investigation, the law firm filed an objection on behalf of the client members of the plaintiff class. The law firm's representation of the businesses resulted in a revision of the proposed settlement's terms resulting in an increase in the recovery for all members of the class. Counsel for the class and counsel for the defendants agreed, and the court found, that the efforts of the law firm benefited the class as a whole. Accordingly, the court awarded attorneys' fees to the law firm for its work in the case.

The revised class action settlement, as approved by the court, awarded to the named plaintiffs in the case (which were not clients of the law firm) certain amounts over and above those sums to which these plaintiffs were entitled as general members of the class. This court-approved award was in recognition of the expense and inconvenience the named plaintiffs incurred as parties and as representatives of the class. Because the law firm's clients also incurred the expense and inconvenience of prosecuting their objection (to a successful conclusion and for the benefit of the entire class), the law firm expressed to its clients an intent to distribute a portion of its fee award to these clients in similar recognition, provided such a distribution would be permissible. The idea of such a distribution did not arise until after the court's approval of the revised settlement agreement and the award of attorneys' fees. The court did not authorize or direct that such a distribution be made by the law firm.

### Discussion

The proposed distribution appears on its face to be a clear violation of the long-standing rule against a lawyer's sharing legal fees with a nonlawyer. This rule is set forth in Disciplinary Rule ("DR") 5.04(a) of the Texas Disciplinary Rules of Professional Conduct, which provides, with exceptions not here relevant, that "A lawyer or law firm shall not share or promise to share legal fees with a nonlawyer."

However, it is suggested that the reasons supporting this rule do not apply to the facts of this case. The primary reasons for the rule are expressed as follows in Comment 1 to [DR 5.04](#):

The provisions of Rule 5.04(a) express traditional limitations on sharing legal fees with nonlawyers. The principal reasons for these limitations are to prevent solicitation by laypersons of clients for lawyers and to avoid encouraging or assisting nonlawyers in the practice of law.

In this case, the first reason cited in the comment does not appear to be involved in the traditional sense

in view of the fact that there is no question of a lawyer's paying a share of fees to a layperson for soliciting clients for the lawyer. Nevertheless, the committee believes the proposed disbursement by the law firm involves a significant risk of a very similar evil. By "rebating" a portion of attorneys' fees awarded for a successful objection to a class-action settlement, a law firm would inevitably be holding out the possibility of similar payments in other class actions for class members that might retain the law firm to raise objections to proposed settlements. The fact that there was not in this case, and might not be in future cases, a binding agreement to pay a rebate would not eliminate the encouragement for class members to hire the law firm to file objections in the hope or expectation of a share of an attorneys' fee that might be awarded to the law firm.

In this case, the court's award of attorneys' fees to the law firm was intended to compensate the law firm for the value conferred on the whole class and was not approved as a means of paying the law firm's clients for raising the objection. If the law firm's clients deserved special compensation (over and above their shares of the settlement as enhanced by their successful objection), that was a matter for the court to determine. Any award by the court of compensation to the client businesses would not involve the potential risks that are the reason for the prohibition set forth in DR 5.04(a).

## **Conclusion**

Under the Texas Disciplinary Rules of Professional Conduct, a law firm may not distribute to nonlawyer clients a portion of court-awarded legal fees for successful prosecution of an objection on behalf of such clients to a proposed class-action settlement.