

The Supreme Court of Texas
Professional Ethics Committee
Opinion No. 566

February 2006

QUESTION PRESENTED

May a lawyer, acting as a receiver, ethically pay a portion of his fee to the parties' lawyers?

STATEMENT OF FACTS

A lawyer is appointed receiver by court order in a family law case to sell land owned by the parties in the case. The lawyer/receiver sells the property and wishes to pay a portion of his fee to the parties' lawyers. The court order appointing the receiver does not address such payments.

DISCUSSION

The duties of a lawyer/receiver will ordinarily be governed by sections 64.001 et seq. of the Texas Civil Practice and Remedies Code and the particular court order specifying the lawyer/receiver's role and assignment. The court order commonly provides for the manner of payment of a receiver's fee. Typically a receiver's fee is paid from proceeds of a sale and reduces the net amount received by the parties. In effect, the parties pay the receiver's fee. In this fact situation, the lawyer/receiver desires to pay, after the receivership is concluded, a portion of his fee to the lawyers representing the parties.

Rule 8.04(a)(1) provides:

“(a) A lawyer shall not:

- (1) violate these rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship[.]”

Receivers are often appointed by the court on the recommendation of the parties' lawyers. The Committee believes that the sharing of the receiver's fee may be perceived as an inducement to the parties' lawyers to recommend the appointment of that receiver. The expectation of receipt of a portion of the receiver's fee could impair the impartial exercise of a lawyer's judgment in assessing the qualifications of potential receivers and result in bias toward a receiver who shares fees. By accepting a portion of the receiver's fee, the parties' lawyers would violate Rule 1.08(e), which provides:

“(e) A lawyer shall not accept compensation for representing a client from other than the client unless:

- (1) the client consents;
- (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
- (3) information relating to representation of a client is protected as required by Rule 1.05.”

Consequently, the lawyer/receiver's payment to the parties' lawyers of a portion of his fee as receiver would constitute assisting or inducing another lawyer to violate Rule 1.08(e) and thus would involve a violation by the lawyer/receiver of Rule 8.04(a)(1).

Moreover, if the lawyer/receiver performed legal services in connection with such appointment as receiver, payment of a portion of the receiver's fee to the parties' lawyers would not be permitted because the payment would not be made in accordance with the requirements of Rule 1.04(f) for division of a fee between or among lawyers.

CONCLUSION

A lawyer who is appointed by a court to serve as a receiver may not pay a part of the receiver fees earned to lawyers representing the parties.