



# ISBA Professional Conduct Advisory Opinion

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**Opinion No. 21-04**

**May 2021**

**Subject:** Division of Fees; Referral Fees and Arrangements.

**Digest:** An Illinois lawyer may enter into a fee-sharing agreement with an out-of-state lawyer who refers a personal injury case to the Illinois lawyer so long as the agreement complies with the applicable Illinois Rules of Professional Conduct and the corresponding rules of the foreign jurisdiction.

**References:** Ill. R. Prof'l Conduct 1.5 (c)(e)(f)(g)

*In re Storment*, 203 Ill.2d 378 (2002)

ABA Formal Opinion 464 (2013)

ABA Formal Opinion 316 (1967)

State Bar of Michigan RI-199 (1994)

Philadelphia Bar Association Opinion 93-15 (1993)

State Bar of Arizona Ethics Opinion 10-04 (2010)

Connecticut Bar Association Committee on Professional Ethics Opinion 91-7 (Ct. 1991)

Florida R. Prof'l Conduct 4-15(f)(4)(D)

## **FACTS**

An out-of-state lawyer wishes to refer a personal injury case to an Illinois lawyer and the Illinois lawyer seeks to enter into a fee-sharing agreement with that lawyer.

## **QUESTION**

Do the Illinois Rules of Professional Conduct permit an Illinois lawyer to enter into a fee-sharing agreement with an out-of-state lawyer and pay that lawyer a referral fee for a personal injury matter to be litigated in Illinois?

### **DISCUSSION**

An Illinois lawyer may accept a personal injury matter from an out-of-state lawyer, enter into a fee-sharing agreement with that lawyer and pay that lawyer a referral fee. Illinois Rules of Professional Conduct Rule 1.5(c) and (e) govern this query and do not prohibit the proposed fee-sharing agreement and corresponding referral fee. Although the Illinois Rules of Professional Conduct do not directly address the question, the Illinois Supreme Court in *In re Storment*, 203 Ill.2d 378 (2002) implied that an agreement to pay a referral fee to an out-of-state lawyer is permitted under the rules. The court was required to determine if Storment violated Rule 1.5(g)(2) by sharing a fee with a Missouri lawyer when he was unable to assume the same financial responsibility as the lawyer to whom he referred the matter. The court ruled that Storment violated Rule 1.5(f) by failing to obtain his client's written consent to a division of fees with another lawyer, the court found no violation for Storment's receipt of a portion of the fee for referring the matter to the Missouri lawyer. It is reasonable to conclude that the Supreme Court would find that the payment of a referral fee to an out-of-state lawyer would be permissible under the rules.

ABA formal opinions support this conclusion. In ABA Formal Opinion 316 (1967) it was determined that it is not necessary for the lawyers to be admitted in the same jurisdiction in order to divide legal fees. In Formal Opinion 464 (2013), the ABA noted that permitting fee-sharing agreements between lawyers of different jurisdictions benefits the clients. The referring lawyer presumably is selecting a lawyer in the other jurisdiction who will be well-suited to represent the client and serve the client's needs. A contrary result would be of no benefit to either the particular client or the legal system itself.

The State Bar of Michigan issued RI-199 (1994) and determined that a Michigan lawyer may pay an out-of-state law firm a referral fee for a divorce case to be litigated in Michigan so long as the referral agreement complies with the ethics rules of both jurisdictions. In its opinion, the state bar determined that the goal of MRPC 1.5(e) is to assist clients in obtaining competent counsel and that it is beneficial to the client to have competent counsel in the state where the matter is litigated. Allowing for out-of-state referrals furthers that goal. If referrals and referral fees were not permitted, the out-of-state lawyer may feel compelled to obtain *pro hac vice* admission and handle the case without having the requisite knowledge of the other state's laws or procedure. Philadelphia Bar Association Opinion 93-15 noted that under that state's court and ethics opinions, a Pennsylvania lawyer is permitted to pay a referral fee to an out-of-state lawyer so long as the lawyers comply with Rule 1.5(e). Other states have concurred and have approved the payment of referral fees to out-of-state lawyers. See State Bar of Arizona Ethics Opinion 10-04 (2010); Connecticut Bar Association Committee on Professional Ethics Opinion 91-7 (Ct. 1991).

While there is no express requirement in Rule 1.5 that the fee-sharing agreement between the lawyers comply with the rules of both jurisdictions, it only makes sense that this be the case. For instance, Florida Rule of Professional Conduct 4-15(f)(4)(D) limits the referral fee in personal

injury cases to 25 percent. An out-of-state lawyer in Florida may not receive a referral fee if the client resides in Florida and is injured in Florida unless that lawyer appears *pro hac vice*. If the fee sharing agreement does not comply with the rules of both jurisdictions, scenarios may arise where the receiving lawyer refuses to pay the referral fee on the basis that either jurisdiction prohibits the payment of the fee.

### **CONCLUSION**

An Illinois lawyer may enter into a fee-sharing agreement with an out-of-state lawyer referring a personal injury case to the Illinois lawyer. The Illinois lawyer may pay that lawyer a referral fee so long as the agreement complies with the Illinois Rules of Professional Conduct as well as the corresponding rules from the other jurisdiction.

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