
**E-83-15 Blanket fee arrangement for insurance
defense cases**

Question

An insurance company proposes to contract with an attorney to act as defense counsel in personal injury claim matters. The contract would provide for a set fee in each case up to the time of trial. The fee would be a blanket fee, arranged in advance for any case referred to the attorney or his firm. The blanket fee would not take into account the amount of work to be done in each individual case. Is it ethical for an attorney to agree to such arrangement?

Opinion

Wisconsin Supreme Court Rule 20.12(1) states that “a lawyer may not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.” The rule continues with a listing of those facts to be considered in determining the reasonableness of a fee. The factors include the time and labor required, the novelty and difficulty of the questions involved, the fee customarily charged in the locality for similar services, the time limitations imposed by the client or by the circumstances, and the amount involved and the results obtained. SCR 20.12(2). The above factors are no more than guides to be taken into account when setting fees. However, the Code of Professional Responsibility does not proscribe any reasonable application of the factors. *See* ABA Formal Opinion 329. Moreover, it is only when a fee is clearly excessive and unreasonable that a lawyer may be disciplined or a fee award refused. ABA Formal Opinion 190 (1939), *State v. MacIntyre*, 238 Wis. 406, 298 N.W. 200 (1941).

Several opinions of the American Bar Association have stated that the use of a fixed fee set in advance is permissible. ABA Formal Opinion 190 permitted a client to determine an attorney’s compensation by fixing a rate of fees which an attorney had to adhere to regardless of the amount of time and effort involved. In so holding, the ABA Committee on Ethics and Professional Responsibility stated that “a lawyer has the right to contract for any fee he chooses so long as it is not clearly excessive.” Similarly, in Informal Opinion 1389 (July 14, 1977) it was held that there was nothing improper in a lawyer charging and being paid

a fixed fee in advance for tax work. *See also* Informal Opinion 1237 (Aug. 9, 1972).

In light of the above, the Professional Ethics Committee finds nothing improper in the proposed arrangement. The committee reminds those attorneys who agree to such arrangements, however, of their duty to represent a client both competently and zealously. *See* SCR 20.31, 20.32, 20.34 and 20.35. Also, practitioners should note that, under the standard insuring agreement, the attorney chosen by the insurance company also represents the insured. Moreover, under such an arrangement the lawyer's primary duty is to the insured. *Baker v. Northwestern National Casualty Co.*, 22 Wis. 2d 77, 125 N.W.2d 370 (1963), 26 Wis. 2d 306, 132 N.W.2d 493 (1965).