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**E-84-4      Division of legal fees with layperson**

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**Facts and Question**

A lawyer handles worker's compensation cases with the aid of a layperson authorized under Wis. Stat. sec. 102.17(1)(c) (1981-82) to appear before the Department of Industry, Labor and Human Relations (DILHR) hearing examiners in such cases. The lay practitioner acts independent of and is not an employee of the lawyer. Both the lay practitioner and the lawyer are named on retainer agreements with clients so clients understand that they are employing both parties. Either party may perform any of the work involved in any particular case, including drafting and filing documents, attending pre-hearings, hearings and appeals.

Fees charged clients would be within DILHR and statutory limits. DILHR determines fees awarded in worker's compensation cases and generally does not apportion fees. Assuming DILHR attorney's fees are awarded to the lawyer, is it ethically proper for the lawyer to divide those fees with the lay practitioner?

**Opinion**

It would be improper for the lawyer to share legal fees with the lay practitioner. The Wisconsin Code of Professional Responsibility, codified in Chapter 20 of the Wisconsin Supreme Court Rules, states that an attorney may not share fees with a nonlawyer. SCR 20.19.

In ABA Informal Opinion 1241 (Feb. 27, 1973), the ABA Committee on Ethics and Professional Responsibility addressed the question of the propriety of dividing fees between a lawyer practicing before a federal agency and a layperson authorized to practice before that agency. The ABA Committee assumed that the provisions of the Code of Professional Responsibility are enforceable against a lawyer with regard to his or her relations with an authorized agent to the extent that such enforcement does not unduly hamper or interfere with the activities permitted to the authorized agent. The ABA Committee stated that forbidding a division of fees between the attorney and the agent as required under the Code of Professional Responsibility would not hamper the agent's activities before the federal agency. As a result, permitting a division of fees

would be improper. *See also* Memo Op. 6/75, Wis. Bar Bull. Supp., June 1979, at 89.

In the present case, prohibiting a division of fees between the attorney and the lay practitioner would not unduly hamper or interfere with the activities of the lay practitioner before the DILHR. In Opinion 463, 1958 N.Y.Co.Y.B. 224, of the New York County Lawyer's Association, the Association addressed a question similar to the present one. The Association stated that a lawyer may employ a licensed layperson who represents claimants before a Worker's Compensation Board on a salary basis, but may not do so on a percentage of fee basis. *See also* Op. 833 1958 N.Y.C.B. 247. Accordingly, it would be impermissible to divide legal fees with the lay practitioner. In addition, in an arrangement such as this, the lawyer should take care so that the provisions of SCR 20.09(2) (recommendation of professional employment) are not violated.