
**E-94-2 Adjustments in fee to compensate
referring attorney**

Question

If an attorney increases his or her hourly fee for cases that are referred by another attorney, with the differential increase in the receiving attorney's fee being paid to the referring attorney as a referral fee, must the client be advised of the increase in the fee? Does the answer differ if the increased fee of the receiving attorney is the same as the regular hourly fee that would have been charged by the referring attorney?

Opinion

In both cases, the client must be advised of the increase in the receiving attorney's hourly fee. This issue is governed by SCR 20:1.5(e) and SCR 20:1.4(b). The question contemplates a division of fees between lawyers in different firms other than in proportion to the services performed by each lawyer, because a referral fee will be paid based upon the number of hours billed by the receiving attorney. To accomplish this goal consistent with SCR 20:1.5(e), both lawyers must have a written agreement with the client by which each assumes joint responsibility for the representation, the client must consent to the participation of each lawyer and be advised that a higher fee will result from the joint representation, and the total fee must be reasonable.

The committee concludes that the fee will increase as a result of the referral because the receiving attorney proposes charging a premium fee to compensate for the referral. Legal services, of course, are not fungible. For this reason, the committee concludes that it is not significant whether the premium hourly rate is the same as the referring lawyer's usual hourly rate. What is significant is that the receiving attorney would be charging a higher fee than he or she ordinarily would charge. The involvement of the referring lawyer results in an increased fee, and this must be disclosed to the client under SCR 20:1.5(e)(2).

The same conclusion is dictated by SCR 20:1.4(b), which requires an attorney to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." As consumers

of legal services, clients are legitimately concerned about the basis for the fees they will be charged. The assessment of a premium fee because of a referral should be disclosed to the client so that the client may make an informed decision regarding whether to accept the referral.