

FORMAL OPINION NO. 117

PROPRIETY OF ATTORNEY ALLOWING CLIENT, A COLLECTION  
AGENCY, TO RECOVER AND RETAIN ATTORNEY FEES AWARDED  
BY COURT

The Ethics Committee of the Idaho State Bar has been requested to render an opinion on the following facts:

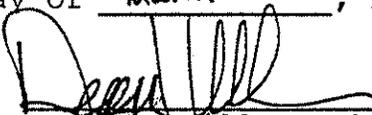
A collection agency wishes to prepare the summons and complaint for its collection actions, retaining an attorney only to sign the papers once they are prepared. Because the involvement of the attorney would be minimal, the collection agency would pay the attorney a monthly retainer and would keep any amounts awarded by the court as attorney fees in excess of the retainer.

The Committee is of the opinion that it would be improper for an attorney to become involved in the above-described course of action.<sup>1</sup> DR 7-102(A)(5) provides that a lawyer shall not make a false statement of law or fact. It is the opinion of the Committee that to submit pleadings to a court over a lawyer's signature with a request for an award of attorney fees, when any such award would not be paid to the lawyer but the collection agency, would be a violation of this disciplinary rule.<sup>2</sup> Such an action would probably also violate Rule 11 of the Idaho and Federal Rules of Civil Procedure.

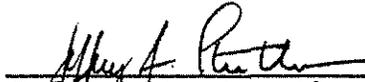
In addition, DR 3-101(A) provides that a lawyer shall not aid a non-lawyer in the unauthorized practice of law.<sup>3</sup> To the extent that the collection agency in the above-described scheme is encouraged to engage in the unauthorized practice of law, the Committee believes that it would be improper for a lawyer to be involved.<sup>4</sup>

DR 3-102(A) prohibits a lawyer from sharing fees with a non-lawyer.<sup>5</sup> If an award of attorney fees is intended as attorney fees, the lawyer, under these circumstances, would be improperly dividing fees with a non-lawyer were he to return all or a portion of the fee award to his client.<sup>6</sup>

DATED this 8<sup>th</sup> day of March, 1986.

  
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Dean J. Miller, Chairman

  
Linda Holdeman

  
Jeffrey A. Strother

FOOTNOTES

1. See Model Rules of Professional Conduct ("MR") 3.3(a)(1), 4.1(a), 8.4(c). The Model Rules were adopted by the American Bar Association in February, 1984. Following review by two Bar Committees, the membership of the Idaho State Bar voted to submit the Model Rules, with minor amendments, to the Idaho Supreme Court for adoption. If adopted, the Model Rules will be effective July 1, 1986.
2. See Id.
3. See MR 5.5(b).
4. See Formal Opinion No. 36 (Idaho, undated), Formal Opinion No. 37 (Idaho, 10/3/62), Opinion 417 (Texas, 4/13/84), See also, Kyle v. Beco, Idaho Supreme Court sl.op., 88, 1985.
5. See MR 5.4(a).
6. See ABA Formal Opinions 157 (5/5/36), 180 (5/10/38), 291 (6/21/58); Opinion 81-23 (Arizona State Bar 7/24/81); Opinion 280 (North Carolina 10/15/80). But see Opinion 541 (Virginia 2/25/84).