Question Presented

Does an attorney risk sharing legal fees with a nonlawyer, their client, in violation of the Colorado Rules of Professional Conduct ("Colo. RPC" or "the Rules"), Rule 5.4, when there is an increase in the award granted by the presiding court, ultimately creating an overage of what is actually owed to the attorney and the attorney wants to give the overage to their client?

An enquirer explained that, in their area of practice, a prevailing party often is awarded attorney fees. Specifically, section 24-72-204(5)(b), C.R.S., provides that "[u]nless the court finds that the denial of the right of inspection was proper, it shall order the custodian to permit such inspection and shall award court costs and reasonable attorney fees to the prevailing applicant in an amount to be determined by the court." Sometimes, when applying a lodestar calculation, the court may increase an attorney fee award.

The question at issue is whether: "if a court's ultimate award to [your] client exceeds the amount [you are] owed under [your] fee agreement . . . may the client keep the overage" without violating "the prohibition against attorneys sharing fees with non-lawyers" under Colo. RPC 5.4?

Rule

Rule 5.4. Professional Independence of a Lawyer
(a) A lawyer or law firm shall not share legal fees with a nonlawyer.

Analysis

Although this Committee does not opine on questions of law, such as the meaning of the statute referenced, the inquiry seeks guidance under the Colorado Rules of Professional Conduct. Specifically, the question is whether a lawyer would violate RPC 5.4(a), prohibiting sharing of legal fees with a nonlawyer, if the lawyer returns any amounts awarded by a court over the amounts the client owes to the lawyer under the fee agreement. The simple answer is no.

Any award under the statute referenced is an award "to the prevailing applicant," which in this case is the client. Even if the amount awarded is to be paid to the client to compensate the client for the attorney fees and costs incurred, the award is to the client. The client can use a portion of that award and pay the attorney's attorney fees and retain the difference (which the question calls an overage) without violating Colo. RPC 5.4.

Specifically, a statutory award to a nonlawyer client for damages, attorney fees and/or costs is not the type of fee sharing encompassed in Colo. RPC 5.4(a)'s prohibition against not "shar[ing] legal fees with a nonlawyer." Other authorities, including the New York State Bar Association Committee on Professional Ethics, have reached the same conclusion. *See, e.g.,* N.Y. State Bar Ass'n Comm. on Prof'l Ethics, Op. 1096, "Lawyer Declining Attorney Fees Awarded to Client" (May 20, 2016), *available at* 2016 WL 3355908. Finally, the Committee notes that any ambiguity can be addressed in the engagement letter and fee agreement.

Advisory Purposes Only

This abstract is issued for advisory purposes only and is not in any way binding on the Colorado Supreme Court or the Office of Attorney Regulation Counsel. Nor does it analyze, discuss, or opine on any other state's rules of professional conduct.