

MINUTES

Committee: Professional Standards

Date: Monday, March 7, 1994

3. PROFESSIONAL CONDUCT HANDBOOK, CHAPTER 9, RULING 6, FEE SHARING -
CORRESPONDENCE FROM N. & ASSOCIATES

A lawyer seeks the Committee's opinion as to whether a proposed matrimonial settlement between her client, who is a lawyer, and his wife, offends this Rule. Pursuant to the proposed settlement, the wife will receive an annual payment equal to 10% of the profits of the husband's law corporation in exchange for her interest in his law practice. The wife is currently employed as a bookkeeper by the husband's law firm. The proposed agreement provides that the profit-sharing agreement will terminate if the wife's employment is terminated. However, in the event that the wife is terminated without reasonable cause, she would continue to share in the firm's profits.

The Committee noted that the proposed agreement contemplated a form of profit sharing, as contrasted with fee sharing. The Committee discussed the conclusion of the Professional Conduct Handbook Review Committee in 1992. That Committee decided that there is nothing improper in a lawyer entering into a lease agreement with a landlord whereby the amount of the rent is based on the tenant's revenue, provided that there is no disclosure of confidential information in the process of calculating the lawyer's revenue. The Committee discussed various situations in which non-lawyers might attempt to share in the profits of a law firm.

The Committee noted that pursuant to section 82(1)(c)(iii) of the Legal Profession Act, where a lawyer is a shareholder of a law corporation, the lawyer's relative, including the lawyer's spouse, is entitled to hold non-voting shares in the law corporation and to participate in the profits of the law corporation.

One member suggested that there are policy considerations favouring the settlement of matrimonial litigation and that the Rule in question should not be interpreted so as to restrict a lawyer's ability to settle such a dispute, which relates to his or her private life, unless it is clear that the interests of the lawyer's clients will be adversely affected.

It was agreed that the proposed settlement does not offend the Rule, provided that the husband does not commit any breach of his duty of confidentiality to his clients in the course of calculating the wife's share of the law corporation's profits.