

Kleps Law Office, PLLC

February 26, 2009

By Michael T. Kleps, practicing Wills, Trusts
and Estates in Bellingham, Washington

Michael T. Kleps
114 W. Magnolia, Ste. 444
Bellingham, WA 98225
michael@klepslawoffice.com
(360) 650-1766

Fee Splitting¹



I want to highlight two, separate sole-practitioner dilemmas and propose an elegant solution.

Problem #1: Many sole practitioners have low-fee legal work they do not want to handle, or cannot economically devote time to. These lawyers either decline the work or accept it as 'back burner' work, both of which likely result in decreased client satisfaction.

Problem #2: New lawyers need referral work to gain experience and earn fees.

Elegant Solution: Bring the best service to your client by splitting the work with another lawyer. Under RPC 1.5(e), a division of fees between lawyers who are not in the same firm may be made if: (1) the division is in proportion to the services provided by each lawyer; (2) the client agrees in writing; and (3) the total fee is reasonable. Under Comment Seven to RPC 1.5, a lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter.

Referral agreements and dividing fees: There are several structures under the professional rules that allow lawyers to share work on cases.

- Consultation Fee: The new lawyer pays a consultation fee to the senior lawyer to get advice on the value of a case and how to handle it. If new lawyer can handle the case with assistance then the senior lawyer makes an efficient fee; and the new lawyer earns a fee, keeps a well-served client, and receives experience.
- Forwarding Fees: Lawyer may pay a forwarding fee for another lawyer's referral. The client must give written permission for the fee amount, both attorneys must take joint responsibility for the representation and the total fee must be reasonable.
- Associating: Many lawyers get permission from clients in the representation agreement to associate with other lawyers. An example of this clause is, "Lawyer shall have primary responsibility for this matter but may enlist the assistance of other lawyers."

Analysis: Because new lawyers have less overhead they can more profitably accept low-paying work. The senior lawyer can associate or forward their backlog and ongoing flow of low-paying, low-profit work to the new lawyer. By associating with a new lawyer, the senior lawyer can still help and retain the client as a contact. Also within this relationship, the new lawyer will likely refer more complex cases to the senior lawyer or hire them as a consultant.

Overburdened lawyers may want help from a new lawyer on the following types of cases:

- Low-pay domestic relation matters:
- Landlord-tenant disputes.
- Out-of-office minor court appearance: Continuances, attendance at depositions, minor judgment/debtor examinations, attendance at medical examinations
- Low-paying criminal and traffic work

By forming relationships, sole practitioner lawyers can maximize one another's strengths to increase profitability for everyone – the client, the new lawyer and the senior lawyer.

¹ I consulted several articles in the book How to start and build a law practice by Jay Foonberg (2004) in writing this.