



Alerts

Court Balances Contract Law Principles With Legal Ethics in Fee-Sharing Case

March 1, 2011

Lawyers for the Profession® Alert

Brown v. Grimes, ___ Cal. Rptr. 3d ___, 2011 WL 242425 (Cal. App. 2 Dist. 2011)

Brief Summary

In litigation between two lawyers based on a fee-sharing agreement, the court held that the referring attorney could not recover fees owed to him because he breached a material condition of the agreement. That condition required the referring lawyer to share fees with a nonattorney who originated the referrals—a practice generally prohibited by the rules of professional conduct (RPCs). The court also held that based on the agreement's apparent unlawfulness the lead lawyer could not rescind the agreement or receive restitution to recover fees already paid to the referring attorney.

Complete Summary

A nonattorney referred several cases to a California lawyer, who in turn referred the cases to another California attorney, who acted as the lead lawyer in the cases. The referring attorney and the lead lawyer entered into a fee-sharing agreement whereby the referring attorney would receive a percentage of the attorney fees on the condition that he pay a percentage of the fees he received to the nonattorney. After the lead lawyer had sent over \$1 million to the referring attorney, it became clear that the referring attorney did not intend to pay the nonattorney. The lead lawyer thereafter refused to pay the referring attorney. The referring lawyer sued the lead attorney for, *inter alia*, breach of contract with respect to the fees that were not paid, and the lead lawyer cross-complained for rescission and restitution for the fees that already had been paid.

The Court of Appeal of the State of California, Second Appellate District, upheld the trial court's finding that the referring attorney's failure to pay the nonlawyer constituted a material breach that excused the lead attorney's obligation to pay the referring attorney. But the appellate court also held that the referring lawyer could keep the money he already had been paid because a claim for restitution, such as that of the lead attorney, requires a total breach. The referring lawyer did not commit a total breach, the court held, because he had performed his promise to refer cases to the lead attorney.

Service Areas

Counselors for the Profession

Lawyers for the Profession®

Litigators for the Profession®



The court generally rejected application of the “unclean hands” doctrine. It further noted, contrary to the trial court’s ruling, that although the fee-sharing agreement between the referring attorney and the nonlawyer may have been unlawful, the unlawfulness did not affect the enforceability of the agreement as between the referring attorney and the lead lawyer.

Finally, the court held that although there was some question as to whether the fee-sharing agreement between the referring attorney and the lead lawyer was improper due to lack of client consent, such a violation did not provide the lead attorney with a basis for recovering the fees paid to the referring lawyer. The court based this holding on the ground that a violation of the RPCs does not itself give rise to a private cause of action.

Ultimately, after accounting for a prior settlement with the nonlawyer for \$2 million, the lead attorney ended up with over \$1.7 million that would have gone to the referring lawyer under the fee-sharing agreement.

Significance of Opinion

This decision explores the byplay between the law of contract and equity, on the one hand, and the rules of legal ethics on the other. The court concluded that in claims based on contract and equity, those fundamental principles apply and here effectively determined the outcome of the claims, even in the face of an underlying agreement that might violate rules that govern the legal profession. Those rules might have independent “financial and administrative consequences” but did not change the result here.

For more information, please contact your regular [Hinshaw attorney](#).

This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.