

Alerts

Attorney Who Refers Matter For a Fee Has Duty to Act if Receiving Lawyer Commits Misconduct

January 20, 2011

Lawyers for the Profession® Alert

Wisconsin State Bar Standing Committee on Professional Ethics, Formal Op. EF-10-02 (October 27, 2010)

Brief Summary

The Wisconsin State Bar Standing Committee on Professional Ethics opined that attorneys who refer matters not only must monitor the referred matter, but also must step in to protect the client's interests if the receiving lawyer appears to commit misconduct, acts incompetently or becomes unable to act.

Complete Summary

The Wisconsin State Bar Committee on Professional Ethics (Committee) addressed the duties of attorneys on both sides of a client referral when referral fees are involved. While a prior Wisconsin ethics opinion focused on the referring lawyer's duties to monitor the referred matter, to choose a receiving attorney based on competence, and to assume financial responsibility for the matter, the present opinion focused on the referring lawyer's duties when concerns arise in relation to the receiving attorney's conduct.

In the event that the receiving lawyer acts improperly or incompetently, or becomes unable to act (through illness, suspension or otherwise), the referring attorney must take steps to protect the client. The referring lawyer might, for example, appear in the matter. Although the referring attorney need not have the same level of expertise or experience as the receiving lawyer, he or she must be able to at least take limited action on behalf of the client such as seeking adjournments or new counsel to take over the matter.

The Committee also opined on issues of shared financial responsibility, informed consent, confidentiality and conflicts of interest. The Committee noted that the degree of each lawyer's shared financial responsibility can be determined by agreement between the attorneys. Moreover, the terms of such an agreement, and of the referral in general, are subject to the client's pre-referral informed consent. Similarly, given the referring lawyer's confidentiality obligations, the referring attorney must obtain the client's informed consent before discussing the potential referral with a receiving lawyer. And because the referring lawyer maintains an attorney-client relationship, the conflict of interest

Service Areas

Counselors for the Profession

Lawyers for the Profession®



rules apply fully to it, and the referring lawyer must maintain an actively licensed status as with any other client.

Significance of Opinion

This opinion highlights the many considerations that attorneys in a referral matter should weigh, including the responsibility they may incur if problems arise with the receiving lawyer's representation.

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.