



Alerts

Failure to Comply With Fee-Sharing Agreement Rules Results in Loss of Fee

April 30, 2014

Lawyers for the Profession® Alert

Donald W. Fohrman and Associates, LTD. v. Marc D. Alberts, P.C., 2014 IL App (1st) 123351

Brief Summary

Two lawyers had an oral agreement for sharing fees. Plaintiff, a workers' compensation attorney, would refer personal injury and medical malpractice cases to defendant. In exchange for the referral, plaintiff received 50% of any attorneys' fees obtained from the referred cases.

After a few years, plaintiff sued defendant alleging various claims, but essentially alleging defendant had failed to provide plaintiff all of his share of the fees. Defendant claimed he owed no fees because the attorney-client agreement they used did not strictly comply with Illinois Rule of Professional Conduct 1.5(e), which governs fee-sharing for referrals. Plaintiff argued the agreements substantially complied with Rule 1.5(e).

The appellate court found strict compliance with Rule 1.5(e) is required for attorneys to receive referral fees. Because the agreement did not strictly comply with Rule 1.5(e), the plaintiff was not entitled to the referral fees.

Complete Summary

Rule 1.5(e) applies to agreements for the division of fees between lawyers who are not in the same firm. Rule 1.5(e) states:

"(e) A division of a fee between lawyers who are not in the same firm may be made only if:

- (1) the division is in proportion to the services performed by each lawyer, or if the primary service performed by one lawyer is the referral of the client to another lawyer and each lawyer assumes joint financial responsibility for the representation;
- (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and
- (3) the total fee is reasonable."

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Plaintiff conceded the fee-sharing agreement did not strictly comply with Rule 1.5(e). The agreement stated the clients had retained plaintiff and defendant, but it did not state how the fees would be divided, thus there was no written agreement to the fee division; and the agreement did not provide that plaintiff and defendant had assumed joint financial responsibility for the case.

Plaintiff argued the agreement "substantially complied" with Rule 1.5(e) and was therefore sufficient. He relied on cases interpreting a precursor rule to 1.5(e). Defendant argued that those cases did not apply. More recent decisions held that strict compliance with the ethical rule for fee-sharing agreements was required for a referral fee to be enforceable.

The appellate court agreed with defendant and stated:

Finally, we would not find there was substantial compliance with Rule 1.5(e) in this case where the attorney-client agreements did not inform the clients of the fee-sharing arrangement based on referrals, the exact split in fees, and that [plaintiff] and defendants had assumed equal financial responsibility. In so concluding, we reject [plaintiff's] argument that an equal split of responsibilities and fees must be presumed because the attorney-client agreements listed both attorneys.

Not only did plaintiff lose on his claim for referral fees against the defendant, but the court affirmed the trial court's order that plaintiff's attorney liens were invalid.

Significance of Opinion

This decision is significant because it underscores the importance of strict compliance with the rules of professional conduct for fee-sharing agreements to be enforceable. Referring attorneys who fail to strictly comply with the rules of professional conduct in their state will most likely lose the referral fee(s) in the event a dispute arises.

For more information, please contact [Terrence P. McAvoy](#) or [Adam R. Vaught](#)

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