

ETHICS OPINION

RO-90-02

QUESTION:

"I am a lawyer licensed to practice in Alabama. I have been appointed as Trustee in Bankruptcy for S. ██████ B█████, III, P.C., and under the authority of the Bankruptcy Code, I have been authorized to serve as attorney for myself as Trustee.

Prior to the filing of the Bankruptcy petition, S. ██████ B█████, III, P.C. was employed to pursue a personal injury case on a contingency fee basis. The case was pursued and a settlement offer was obtained. Thereafter, S. ██████ B█████, III, P.C. referred that case to another lawyer under an agreement that the other lawyer would pursue the case and that the attorney's fee earned in the case under the contingency fee arrangement would be shared.

After the case was referred to the other lawyer, S. ██████ B█████, III, the sole stockholder of S. ██████ B█████, III, P.C., was temporarily suspended from the practice of law in Alabama and disbarment proceedings are now pending against him.

The personal injury claim has now been settled, but the lawyer to whom the case was referred by S. ██████ B█████, III, P.C. has refused to pay any part of the attorney's fee in the case to S. ██████ B█████, III, P.C. because its sole stockholder has been temporarily suspended from the practice of law and because he is, therefore, prohibited by Ethical Consideration 3-8 of the Code of Professional Responsibility of the Alabama State Bar from sharing the fee with a non-lawyer.

As Trustee in this case, I have a responsibility to pursue all funds to which S. ██████ B█████, III, P.C. is entitled, and as attorney for the Trustee, I have an obligation under Canon 7 to zealously represent the Trustee and the Bankruptcy estate within the bounds of the law. Since S. ██████ B█████, III, P.C. did perform legal services in the personal injury case and since to allow the lawyer to whom the case was referred to receive a windfall by not having to share the fee receive, at the expense of the creditors of S. ██████ B█████, III, P.C., I feel that I have an obligation to pursue recovery of the attorney's fee due to S. ██████ B█████, III, P.C. The creditors of S. ██████ B█████, III, P.C. include people with malpractice claims, so the obligation to recover these funds for them is especially strong.

On the other hand, as a lawyer, I have an obligation under Canon 3 to assist in preventing the unauthorized practice of law, which includes preventing the sharing of fees with non-lawyers. Since the lawyer to whom the personal injury claim was referred contends that he is prohibited by Canon 3 from paying an attorney's fee to S. ██████ B█████, III, P.C., I am troubled that by pursuing the recovery of those funds, I may be violating my obligations under Canon 3.

Therefore, I request an opinion on the following question:

Under the circumstances outlined above, will I violate my obligations under Canon 3 of the Code of Professional Responsibility of the Alabama State Bar by pursuing recovery of the attorney's fee due to [REDACTED], P.C.?"

* * *

ANSWER:

We are of the opinion that a suspended or disbarred lawyer may receive, subsequent to the date of his suspension or disbarment, legal fees to which he was entitled for work performed prior to his suspension or disbarment. While we cannot speculate as to how such a fee might be computed, or to the amount of money to which Mr. B[REDACTED] might be entitled, we do feel that Mr. B[REDACTED] is entitled to seek recovery, directly or through the Bankruptcy Trustee, of any fees to which he was entitled for services rendered prior to his suspension or disbarment.

AWJ/vf

1/17/90