

AO 1982-3/24

NEW HAMPSHIRE BAR ASSOCIATION
Ethics Committee Advisory Opinion
Attorney Participation in Financial Counseling Service Debt Management Program

April 12, 1983

ADVISORY OPINION

ETHICS COMMITTEE ADVISORY OPINION: #1982-3/24
March 24, 1982

Reviewed by Board of Governors April 21, 1983

FACTS:

Individuals in need of financial counseling voluntarily contact Family Financial Counseling Services (FFCS). A debt management program is a part of the services which this non-profit organization provides. The service depends upon creditor contributions for its operating expenses. FFCS's terms are set forth in a letter to its clients' creditors. If the creditor chooses to participate in the program, 10% of any amount paid to the creditor will be withheld by FFCS as a contribution to the Service. In some instances, the creditor agrees to participate in the debt management program after its account has been turned over to an attorney for collection.

QUESTIONS:

- 1) Is an attorney dividing fees with a non-lawyer, in violation of DR 3-02, by participating in a debt management program such as FFCS's?
- 2) If the answer to Question #1 is yes, then how should an attorney who represents a creditor proceed when the debtor participates in a debt management program such as FFCS's?

RESPONSES:

The Ethical Considerations relating to Canon 3 deal mainly with the unauthorized practice of law and the attorney's duty to assist in its prevention. Since assisting others with debt management does not seem to constitute the unauthorized practice of law by FFCS, in that the services rendered do not require the professional judgment of a lawyer, the attorney who represents a creditor who has agreed to participate in a program such as that offered by FFCS is not in violation of Canon 3 so long as his conduct is in keeping with NOTE 13 of Canon 3 which states:

“The receiving attorney shall not under any guise or form share his fee for legal services with a lay agency, personal or corporate, without prejudice, however, to the right of the lay forwarder to charge and collect from the creditor proper compensation for non-legal services rendered by the lay forwarder which are separate and apart from the services performed by the receiving attorney.”

For purposes of this inquiry, we must assume that the attorney is representing the creditor for a fee based on a percentage of the amount collected. In the case of an hourly fee or some other fee arrangement, the issues posed here would not apply. Whether a creditor is involved in a debt management program or not, the attorney's duty remains the same and he must, in any case, represent his client in accordance with Canon 7. The withholding of 10% of the amount paid to the lawyer for his client is not a division of fees but rather a compromise on the creditor's part in that he is willing to accept 90% of the money owed to him and to contribute the other 10% to FFCS for having benefited from their services. This is no different from any other compromise made by an attorney for his client which is made in the best interest of the client and which constitutes a satisfactory settlement of a claim. Since this is not a division of the attorney's fee with a non-lawyer, it is not in violation of DR 3-102.

Since participation in such a program is not in violation of DR 3-102 or of any other Disciplinary Rule, there is no special procedure which an attorney would have to follow in order to represent a creditor who is involved in such a program.