

Nebraska Ethics Advisory Opinion for Lawyers
No. 81-5

WHERE AN ATTORNEY IS THE PERSONAL REPRESENTATIVE OF A DECEDENT'S ESTATE, AND THE ATTORNEY'S LAW FIRM RENDERS LEGAL SERVICES TO THE PR, THE FIRM MAY BE COMPENSATED FOR THE LEGAL SERVICES, AND THE PR MAY BE COMPENSATED FOR HIS SERVICES AS PR, PROVIDED THAT THE COMBINED COMPENSATION IS NOT EXCESSIVE FOR THE SERVICES RENDERED.

FACTS

Under the terms of a decedent's will, an attorney is appointed personal representative, and the attorney qualifies and serves as PR. The law firm of which the attorney is a member performs legal services in connection with the probate of the estate. Some of the legal services are performed by the PR himself.

QUESTION PRESENTED

May the law firm of which the PR is a member receive compensation for the legal services rendered to the PR, in addition to the compensation which the attorney receives his services as PR?

DISCUSSION

EC 2-17 admonishes that "[a] lawyer should not charge more than a reasonable fee." DR 2-106(A) provides that "[a] lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee." DR 2-106(B) says that a fee is clearly excessive if a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee.

The Committee on Ethics and Professional Responsibility of the American Bar Association, in Informal Opinion 1338, dated August 19, 1975, stated that it would not

be ethically improper for a law firm to require a member of the firm who acts as executor of an estate to pay to the firm any amount received by the attorney for his services as executor, where the firm acted as attorney for the executor and lawfully received the maximum fee allowable by the court for the firm's legal services. In connection with this ruling, the ABA Committee assumed that the receipt of both the attorney's fee and the executor's fee would not be illegal in the jurisdiction in question.

The Supreme Court of Nebraska has held that an attorney who serves as the administrator of an estate, and who also performs legal services which are necessary and beneficial to the estate, may be allowed compensation for the legal services, in addition to the compensation payable to the attorney for his services as administrator. The Court held that the legal services were "extraordinary" under section 30-1412, R.R.S. 1943. *Anderson v. Lamme*, 174 Neb. 398, 118 N.W.2d 339 (1962).

Section 30-1412, R.R.S. 1943, was repealed in connection with the adoption of the Uniform Probate Code, as amended, which became effective on January 1, 1977. Under the Uniform Probate Code, as amended, a personal representative has authority to employ persons, including attorneys, even if they are associated with the PR, and the personal representative is entitled to reasonable compensation for his services. R.R.S. 1943, Reissue of 1979, §§ 30-2476(21), 30-2480. The probate code permits the personal representative to determine the amount of the fees to be paid to the PR and the PR's attorneys. This is an important departure from the previous practice, under which the fees were determined by the County Court. See the comment following section 30-2482, R.R.S. 1943, Reissue of 1979.

Although the practice under the probate code differs considerably from the previous practice, we are not aware of any provision in the code that changes the rule, set forth in the case of *Anderson v. Lamme*, *supra*, that a personal representative may receive

compensation for his legal services, in addition to the compensation which he receives for his services as PR.

An analogous situation was considered in Informal Opinion 1454 of the ABA Committee on Ethics and Professional Responsibility, dated May 12, 1980. One of the questions submitted for consideration was whether a lawyer serving as a trustee in bankruptcy could employ his own law firm to represent him as trustee for the purpose of prosecuting claims under the Truth in Lending Act. The ABA Committee found that there was nothing in the Code of Professional Responsibility forbidding the trustee's firm from representing him. The Committee did point out, however, that the employment of attorneys by a trustee in bankruptcy requires the approval of the bankruptcy court.

CONCLUSION

It is our opinion that a law firm which performs legal services on behalf of a PR who is a member of the firm may receive compensation for the legal services, while the PR may, in addition, receive compensation for his services as PR. Our opinion is subject to the condition, of course, that the total compensation must not be excessive, taking into consideration the services performed in both capacities.