

RULE 1.5 (FEES) PASS THE CASE IF YOU MUST, BUT GET A FEE IF YOU CAN.

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PRACTICE TIPS FROM BAR COUNSEL

*"Jack of all trades, master of none."*¹

*"The jack-of-all-trades seldom is good at any. Concentrate all of your efforts on one definite chief aim."*²

It's fun to think of one's self as a jack-of-all-trades. I can do it all, one might think. Renaissance man comes to mind, if you're a man.

The downside of the well-known phrase about such a jack, which is an Old World term for a man, is the well-known associated phrase: "Master of none."

According to the complete sentiment (apparently first used in or about 1618 by Geffray Mynshul, a then-renowned Shakespeare-basher), such a jack has many skills, none of which are outstanding. He's the opposite of a Renaissance man who can do everything well.

A few Renaissance men and women exist in the legal profession. Maybe you know one. They can do it all. The rest of us, however, are mortal and possess the limitations conferred on mere earthlings.

Unfortunately for us mortals, especially attorneys in private practice, there exists a temptation to take any case with a potential for profit. After all, altruistic motives aside, we need to make money.

Too many attorneys accept cases in unfamiliar legal arenas. We've all heard about the huge personal injury settlement received after only a letter or two from the attorney, who then took one-third of the bonanza. We all want that case.

So what happens when such a matter is referred by someone who knows only that you're a lawyer? They don't know what kind of law you practice. The referral often is from a family member, probably your mother. Just keep the matter, the money-grubbing voice in your head suggests, and reap the windfall.

Luckily, Nevada has relaxed ethics rules in a way that encourages lawyers to let the file go, to allow an attorney who knows what he/she is doing to take control. But the new rule also allows the first lawyer to maybe make some money.

Traditionally, a referral fee was difficult because of the restrictions required to make the transaction possible. Without getting into details of those now non-existent requirements, they effectively prohibited attorneys who ultimately handled a case from giving a fee to the referring attorney.

As a result, Mr. Civil Guy was tempted to represent the criminal defendant. Or worse, as in my case, Mr. Criminal

Guy thought about hanging onto the civil workman's comp matter that unexpectedly came through the door.

The unfortunate result in either scenario often implicated Rule of Professional Conduct 1.1 (Competence), formerly Supreme Court Rule 151. As noted above, few of us are Renaissance-types who can handle anything.

A relatively new ethics rule, effective May 1, 2006, greatly relaxed the requirements surrounding fee sharing. Pursuant to RPC 1.5(e) (Fees), division of fees between lawyers not in the same firm is permitted if:

- The client agrees to the arrangement, including the share each lawyer will receive;
- The agreement is confirmed in writing; and
- The total fee is reasonable.

So, what does this mean? Keep the client in the loop, get his or her approval, and ensure that the attorneys' total fee is reasonable. And what's reasonable? Although such questions are determined on a case-by-case basis, it's a good idea to make sure that the client's share doesn't decrease because of his/her having multiple attorneys.

Napoleon Hill, the 20th century author whose quote is noted above, practically invented the genre of literature focusing on personal success. He advocated concentrating on a specific goal, not trying to do everything.

Modern attorneys should heed Mr. Hill's advice. We shouldn't stray into unfamiliar areas of law. Operating outside of our what-we-know envelope can cause us to flub the case, get no monetary payout, and then have to explain what happened in light of RPC 1.1 (Competence).

Our Supreme Court did attorneys a huge favor with its 2006 rule change of RPC 1.5(e). It's now easier to pass the case to another lawyer, with your client's consent, and accept a modest referral fee.

After all, the smart jack knows what he doesn't master. **NL**



¹ *Essays and Characters of a Prison*, Geffray Mynshul (1594-1668).

² Napoleon Hill, American author (1883-1970).

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