

<b>ETHICS OPINION 2010-03</b>
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**Rule:** Rules 1.2, 5.4

**Subject:** Settlement of disputed claims; fee splitting

**Summary:** Attorney representing deceased attorney's estate may follow personal representative's direction to settle disputed claim alleged to arise from promise to split fees with a non-lawyer

Attorney represents the estate of a deceased lawyer. A claim has been presented against the estate by a non-lawyer. The non-lawyer contends that the deceased lawyer agreed to pay him for work done in a matter undertaken by the deceased lawyer. It appears that the agreement called for sharing of the deceased lawyer's fee in some part. The personal representative of the deceased lawyer's estate would like to resolve this claim through negotiated settlement with the claimant. Attorney has asked if consummating the settlement violates the rules of professional responsibility.

Rule 5.4 provides that attorneys may not share legal fees with non-lawyers except in certain enumerated exceptional circumstances not involved here. Attorney does not propose to split the fee owed to him by the estate, however. Instead, he would dispose of one claim against the estate by a compromise settlement directed by the personal representative. While the fee splitting prohibitions of Rule 5.4 may provide a defense to the underlying claim, the decision of whether to enter a negotiated settlement belongs to the client pursuant to Rule 1.2(a). Additionally, the attorney is not splitting his fee, but disposing of assets of the estate which is not governed by Rule 5.4. The attorney therefore should complete the settlement as directed by the personal representative and does not violate Rule 5.4 in doing so.

Neil Fulton, Chair  
Ethics Committee  
State Bar of South Dakota