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**E-84-1 Lay consulting service**

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**Question**

An opinion regarding the utilization of a lay consulting service in personal injury cases was requested of the Ethics Committee. The service represents that it does not practice law or medicine, but restricts its services to technical, medical-legal consultation and research, and the procurement of expert witnesses. The consulting services are offered on a contingent fee or flat fee basis.

**Opinion**

The Wisconsin Code of Professional Responsibility, codified in Chapter 20 of the Wisconsin Supreme Court Rules, permits utilization of such a service provided that: (1) the service does not engage in the unauthorized practice of law. SCR 20.18(1); (2) the lawyer does not share legal fees with the service, SCR 20.19; and (3) a contingent fee is not paid for expert testimony, SCR 20.43.

SCR 20.18(1) prohibits a lawyer from aiding a nonlawyer in the unauthorized practice of law. Assuming that the consulting services provided do not constitute the unauthorized practice of law, it would be permissible for a lawyer to recommend such an arrangement to a client. Of course, the lawyer must at all times retain full control of the litigation and may not abdicate to another his or her ultimate professional responsibility for evaluating the case and the course to be followed. SCR 20.23(1). *See* ABA Informal Op. 1375 (Aug. 10, 1976).

SCR 20.19 generally prohibits a lawyer or law firm from sharing legal fees with a nonlawyer. Accordingly, a lawyer must take care to analyze the source and amount of fees paid to a lay consultant whenever such consultant plays a part in the attorney-client relationship. *Annotated Code of Professional Responsibility*, American Bar Foundation, 1979, p. 148. The consultant's fees must be paid from proceeds recovered from the client's claim, rather than from the attorney's fees for legal services. ABA Informal Op. 1375 (Aug. 10, 1976).

SCR 20.43 prohibits payment of contingent fees to witnesses. Payment of witness fees by the consulting service would be prohibited in most circumstances as the fees would originate from the contingent fee arrangement between the client and the service. ABA Informal Op. 1445 (Feb. 1, 1980). There is no

ethical impropriety, however, if the witness fees are not included in the contingency fee and such fees and other expert witness expenses are separate charges to be paid by the client regardless of the outcome of the case. Maine State Bar Assoc. Op. 67 (August 1978).

Subject to the above qualifications, it would be permissible to utilize the lay consulting service described in the request whether on a contingent fee or flat fee basis.