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## Division of Fees With Attorneys Forwarding Collections--Proper basis Indicated--Retention of Share of Fee by Forwarding Attorney Without Accounting to Client--Not Necessarily Improper

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report of either case. It is submitted that in an "unless" oil and gas lease nothing should excuse the lessee's failure to pay the delay rental within the time fixed except some representation or act of the lessee of a nature to give rise to estoppel. Furthermore, the lessee has an option to terminate the lease by failure to pay the delay rental and his failure to exercise his option to pay delay rental is an exercise of the option to terminate and may be treated as such by the lessor. The history of the oil and gas business indicates that the lessee does not require a court of equity to protect him from the effect of disadvantageous leases.

—J. W. S.

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QUESTIONS AND ANSWERS OF COMMITTEE ON PROFESSIONAL ETHICS OF NEW YORK COUNTY LAWYERS ASSOCIATION<sup>1</sup>

QUESTION NO. 180

DIVISION OF FEES WITH ATTORNEYS FORWARDING COLLECTIONS—PROPER BASIS INDICATED—RETENTION OF SHARE OF FEE BY FORWARDING ATTORNEY WITHOUT ACCOUNTING TO CLIENT—NOT NECESSARILY IMPROPER.—1. An attorney in the course of litigation is required to engage the services of an out-of-town attorney. This out-of-town attorney in due course renders his bill for the services rendered, upon the prior understanding that the forwarding attorney is to receive the customary one-third of the fee. The client could not have procured the services to be rendered by an out-of-town attorney for a less price than the amount charged. Is the forwarding attorney entitled to retain for his own use the share of the fee he receives from his out-of-town corresponding attorney? 2. Under a similar arrangement for the payment of a share of the fee to a forwarding attorney, the latter attorney arranges with his client to conduct the entire litigation, including disbursements, for a fixed amount. In the latter case, would he

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<sup>1</sup>In answering questions this Committee acts by virtue of the following provisions of the by-laws of the Association, Article XVI, Section III:

"This Committee shall be empowered when consulted to advise inquirers respecting questions of proper professional conduct, reporting its action to the Board of Directors from time to time."

It is understood that this Committee acts on specific questions submitted *ex parte*, and in its answers bases its opinion on such facts only as are set forth in the questions.

ethically be entitled to retain the share of the fee which he receives from his out-of-town corresponding attorney and not account for it to the client?

*ANSWER NO. 180*

1. The Committee reaffirms its opinion that division of fees between attorneys "should be based upon a sharing of professional responsibility or of legal services, and that no such division should be made except with a member of the legal profession associated in the employment as a lawyer. Any other division would appear to be a mere payment for securing professional employment, which is to be condemned." (Question 42).

All division of fees between attorneys is by agreement, expressed or implied, but as to whether a one-third-two-thirds division is customary outside of the collection business, the Committee expresses no opinion. It is assumed that the out-of-town attorney was retained in the "course of litigation," the forwarding attorney shared in the professional responsibility, if not in the actual legal services. Upon the above assumptions, in the opinion of the Committee, the receipt of a share of the fee by the forwarding attorney is justifiable as a compensation for services and it may properly be retained by the forwarding attorney for his own use. The client, however, should be advised of the fact that his attorney received part of the fee of the out-of-town attorney.

2. Assuming, as the Committee does, that the client was not overreached or deceived in fixing the agreed amount, it is not of the opinion that the forwarding attorney owes an accounting to his client; but if the arrangement with the client is of a nature which, for his proper enlightenment or to enable him to make a fair contract with his lawyer, requires a disclosure of the actual disbursements, of course, the client should not be deceived or misled by concealment of the division.

The Committee does not understand the question to imply that the forwarding attorney agrees at all events himself to pay the disbursements.

*QUESTION NO. 183*

ACCEPTANCE OF EMPLOYMENT AT EXPENSE OF ONE ADVERSELY INTERESTED TO ACT AS ATTORNEY IN BEHALF OF INFANT TO SECURE AUTHORITY FOR SETTLEMENT AND RELEASE OF INFANT'S