

**BAR ASSOCIATION OF ERIE COUNTY
COMMITTEE ON PROFESSIONAL ETHICS**

Opinion 11-05	Topic:	Referral fees paid to lawyer by investment company from the fee for their services
	Digest:	It is ethically prohibited for a lawyer to enter into a solicitation agreement with a third party investment advisor to receive a portion of the fee paid to the investment advisor for the investment advisor's services
	Code:	1.7(a); 5.8(a)

QUESTION

May an attorney refer investment clients to a financial investment company and be compensated for such referrals from the management fees earned by the investment company as compensation for their services?

OPINION

The permissibility of a lawyer accepting a referral fee from a non-lawyer professional has been the subject of ethics opinions of both this Committee (see Opinion 08-03) and of the New York State Bar Association Ethics Committee (see Opinion 711 1999). More specifically, these opinions were premised upon 22 NYCRR 1200.20 which provided, “a lawyer shall not accept or continue employment if the exercise of professional judgment on behalf of the client will be reasonably affected by the lawyer’s own financial, business, property, or personal interest, unless a disinterested lawyer would believe that the representation of the client would not be adversely affected thereby and the client consents to the representation after full disclosure of the implications of the lawyer’s interests.”

Here, since the exercise of professional judgment on behalf of a client will or may reasonably be affected by the lawyer’s own financial interest, his entering into such solicitation agreement might not allow the lawyer to exercise independent professional judgment on behalf of the client. In NY State Bar Opinion 711 (1999), the New York State Bar Association opined that former DR5-101(a) and DR 5-104(a) prohibited a lawyer in estate planning from recommending life insurance products to the lawyer’s clients if the lawyer has a financial interest in the sale, because the opportunity for overreaching by the lawyer was “too great to be tolerated” creating a conflict that cannot be cured by disclosure and client consent. We opine that these same restrictions apply here.

We further agree with the view of the NY State Bar Opinion 682 (1995) wherein the Ethics Committee opined this premise to be especially true as “clients view recommendations of other professionals as part of their representation by their lawyers, and expect that lawyers will act as trusted fiduciaries in such matters.”

Under the current New York Rules of Professional Conduct, Effective April 1, 2009, as adopted by the New York State Supreme Court Appellate Division, at Rule 1.7(a)(2) similarly provides that “a lawyer should not represent a client if a reasonable lawyer would conclude:

“There is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests.”

Further, Rule 5.8(a) expressly recognizes that clients of lawyers practicing in New York are “guaranteed independent professional judgment and undivided loyalty uncompromised by conflicts of interest” and that “multi-disciplinary practice between lawyers and non lawyers is incompatible with the core values of the legal profession...”

CONCLUSION

It is ethically prohibited for a lawyer to enter into a solicitation agreement with a third party investment advisor and to receive a portion of the fee paid to the investment advisor for the investment advisor's services.