

You advise that Attorney A sued Mortgage Banker B as a private consumer. The suit involved a refinancing dispute between A, as a private individual, and B. A represented himself prior to trial, B offered to settle with A by paying all of A's out-of-pocket expenses if A would permit dismissal of the other claimed damages. B also offered that in addition to monetary payment, B would refer to A ten potential clients when, as often happens, potential clients ask B for the name of an attorney who would represent them during mortgage transactions. A would set his own fee and would make no payments to B. Further, B regularly recommends lawyers upon request by potential clients.

You wish to know whether or not it is ethical for A to accept any clients referred by B. You also wish to know what disclosure, if any, must be made by A to potential clients concerning the relationship between A and B.

Disciplinary Rule 2-103(D) states that "a lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client or as a reward for having made a recommendation resulting in his employment by a client, except that he may pay for public communications permitted by DR:2-101 and the usual and reasonable fees or dues charged by a lawyer referral service and any qualified legal services plan or contract of legal services insurance as authorized by law, provided that such communication of the service or plan are in accordance with the standards of DR:2-101 or DR:2-103, as appropriate." In the situation described in your letter, it appears that A would be giving something of value (dismissal of the other claimed damages) in exchange for B's recommendation of A to potential clients.

The Committee opines that it would be improper for A to accept the clients referred by B.

Committee Opinion
April 11, 1988