

You have asked the Committee to consider the ethical implications of a client's employment of a court reporting service in which the client's attorney has an ownership interest. You have advised that you are about to become a limited partner in a company which provides court reporting, photography and videotaping services. The costs for services by this new company are considerably less than the present market rate, and you would like to give your clients the option to take advantage of the savings. You have proposed to inform your clients, as well as other counsel, in writing, of your partial-ownership interest in the firm to be used for court reporting.

The appropriate and controlling disciplinary rule relative to your inquiry is DR:5-101(A), which provides that a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client may be affected by his own financial, business, property or personal interest, except with the consent of his client after full and adequate disclosure under the circumstances. In addition, the Committee directs your attention to DR:5-104(A), which addresses the attorney's business relations with a client where they have differing interests. While the Committee has not opined on the propriety of an attorney who has an ownership interest in a court reporting firm referring his clients to that firm for their services, the Committee has previously opined that an attorney cannot ethically nor legally undertake representation of a client when the attorney has personal interests which are not compatible with those of the client, unless the attorney fully discloses those interests to his client, and the client consents to the representation. (See LE Op. 187) In the Committee's view, if the attorney's disclosure is such that his client is able to make an informed decision, then the disclosure is adequate. Furthermore, any doubts regarding the sufficiency of the disclosure must be resolved in favor of the client and against the attorney, since it is the attorney who seeks to profit from the advice given his client. Thus, under DR:5-101(A), the attorney's disclosure of his ownership interest may specifically include commissions or fees, directly or indirectly received, as a result of a client's employment of the court reporting firm. (See: LE Op. 187.)

Committee Opinion
February 22, 1989