

Committee Opinion  
February 8, 1994

LEGAL ETHICS OPINION 1581

CONFLICT OF INTEREST - AVOIDING  
INFLUENCE BY OTHERS THAN THE  
CLIENT: LAWYER RECEIVING FEE,  
FROM COMPANY, FOR HAVING  
REFERRED CLIENTS WHO HOLD  
COMMERCIAL PAPER.

You have presented a hypothetical situation in which a company, operated by nonlawyers, wishes to buy notes and other forms of commercial paper which are secured by real estate. The company proposes to offer lawyers a fee/commission for referring clients that hold such paper.

You have asked the committee to opine whether, under the facts of the inquiry, a lawyer's referral of a client, and acceptance of a fee/commission, is unethical. You also ask whether the propriety would be impacted by the lawyer's disclosure of the fee/commission to the client.

The appropriate and controlling Disciplinary Rule related to your inquiry is DR:5-106(A)(2), which states that except with the consent of his client after full and adequate disclosure under the circumstances, a lawyer shall not accept from one other than his client anything of value related to his representation of or his employment by his client. See also DR:5-101(A) (absent full disclosure to and consent from the client, a lawyer may not accept employment if the exercise of his professional judgment on behalf of the client may be affected by the lawyer's own financial, business, property, or personal interests).

The committee is of the opinion that the situation described is analogous to an attorney's receipt of a portion of his client's real estate agent's commission. See LE Op. 209. The committee further believes that the commission is a nonlegal fee. Thus, the committee opines that it would not be improper for the attorney to make such a referral, and accept such a fee, provided there is full disclosure to, and consent from, the client and further provided that the attorney does not advise the client with respect to the transaction with the third party.