

Committee Opinion
April 11, 1994

LEGAL ETHICS OPINION 1593

CONFLICT OF INTEREST - BUSINESS
TRANSACTION WITH CLIENT:
ATTORNEY RECEIVING CORPORATE
STOCK AS PAYMENT OF LEGAL FEES.

You have presented a hypothetical situation in which an attorney is asked to perform legal services for a three-person partnership relating to (1) negotiation and drafting contracts between the partnership and third parties; (2) preparing a written partnership agreement; (3) eventually incorporating the partnership; and (4) negotiation and drafting contracts between the new corporation and third parties in the future.

You have asked the committee to opine whether, under the facts of the inquiry, it is permissible for the attorney to receive as all or part of this compensation for his services, shares of stock in the to-be-formed corporation.

The appropriate and controlling Disciplinary Rule related to your inquiry is DR:5-104(A), which states that a lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless that client has consented after full and adequate disclosure under the circumstances and provided that the transaction was not unconscionable, unfair or inequitable when made. Further guidance is provided by Ethical Consideration 5-18 which admonishes in pertinent part that

[a] lawyer employed or retained by a corporation or similar entity owes his allegiance to the entity and not to a stockholder, director, officer, employee, representative, or other person connected with the entity. In advising the entity, a lawyer should keep paramount its interests and his professional judgment should not be influenced by the personal desires of any person or organization.

The committee is of the opinion that it is not per se improper for an attorney to accept compensation in the form of corporate stock for legal services rendered to a corporation and to its predecessor partnership. The committee believes that an attorney may, under DR:5-104(A), provide legal services to a corporation in consideration of the stock issued so long as he feels his independent professional judgment will not be affected by his status as a stockholder, the client consents after full disclosure by the lawyer of the potential conflicts of interest, and provided that the transaction is not unconscionable, unfair or inequitable when made. The committee is of the view, however, that an attorney may not continue employment if his independent professional judgment will be affected by his business interest in a corporation. Further, an attorney may accept stock in a newly formed corporation as compensation for legal services previously rendered. See Michigan State Bar Legal Ethics Opinion CI-1059 (undated), ABA/BNA Law. Man. on Prof. Conduct, 801:4890.

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Legal Ethics Committee Notes. – Under Rule 1.8(a), a lawyer may not enter into a “business transaction” with a client unless the client is given an opportunity to seek independent advice, and there has been full disclosure and consent in writing.