

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

In the opinion of this Committee, it is proper for a duly qualified attorney to list himself in a classified telephone directory under both "Patent attorneys and agents" and "Attorneys" or "Lawyers". N.Y.State Opinion #81-6/6/68 (16-68) is hereby modified to the extent inconsistent herewith. See Silverman vs. State Bar of Texas, _____, F.2d _____ (5th Cir. Dec. 1968, Case #25582 160 US PQ 171). To the contrary see ABA 286, ABA Inf. 1048.

Opinion #107 - 6/10/69 (9-69)

Modified by #107(a)

Topic: Commissions and Rebates
Digest: Proper for a lawyer to accept referral fee from investment agent for placing certificates of deposit in financial institutions with funds of clients as long as full disclosure is made to client and client consents.

Canon: *Former Canon 38*

QUESTION

A financial company has offered to enter into an arrangement with an attorney whereby the attorney would receive stipulated fees for causing funds of the attorney's clients to be referred to said company for investment in certificates of deposit in various savings and loan associations. The proposed fee agreement provides that the attorney must return his fee in whole if a client's funds are withdrawn in six months or less, and that half the fee must be refunded if withdrawal is made within a year. The proposed agreement further provides that fees will be paid on the attorney's personal accounts, but not until an equal amount is placed by the attorney for his clients.

The attorney inquires whether he may accept such referral fees, and if so, whether he must disclose the arrangement to his client or remit the fee to his client.

OPINION

Normally, the acceptance by an attorney of a commission or fee, such as is generally remitted by title insurance companies to attorneys who cause their clients to purchase a title policy from the company, is only proper where there is full disclosure to the client and the client's consent is obtained. In the event that the client desires that any commission paid to the attorney be remitted to the client, the attorney must do so, and disclosure of this fact should be made to the company granting the fee, since this fact may affect its willingness to grant such fee.

The proposed fee arrangement could be a factor which might induce the attorney to cause his client's funds to be invested through the agency granting this fee, rather than through some other medium of investment, or induce the attorney to advise his client to keep his funds invested for a period longer than circumstances objectively would dictate. In the opinion of the Committee, therefore, the proposed arrangement may be professionally improper unless the attorney, before taking any steps to invest his client's funds, shall disclose to his

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client the entire arrangement, shall describe to the client how this form of investment compares with other available forms known to the lawyer, and the client shall consent to the attorney's receipt of a fee. Here, too, the attorney must remit the fee to the client if the client desires, and must communicate the client's wishes to the financial agency, since the agency's willingness to extend the fee may be affected by such fact. Since investments made for the client by the attorney under this arrangement are in a sense transactions between attorney and client, the attorney must be particularly careful to exercise the highest degree of good faith in respect to any advice or acts of the attorney in any way connected with the transaction.

See the following opinions, printed, at the pages indicated, in Opinions Of The Committee On Professional Ethics Of The Association Of The Bar Of The City Of New York And The New York County Lawyers' Association, Columbia University Press, New York, 1956:

N.Y.City 5 (April 25, 1924, p. 4)
N.Y.City 203 (Oct. 30, 1931, p 99)
N.Y.County 124 (1917, p. 582)
N.Y.County 194 (1921, p. 628)
N.Y.County 289 (1930, p. 688)

Opinion #107(a) - 1/29/70 (29-69)

Topic: Commissions and rebates

Modifies #107

Digest: Proper for a lawyer to accept referral fee from investment agent for placing certificates of deposit in financial institutions with funds of clients as long as full disclosure is made to client and client consents.

Code*: Former Canon 8

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