

**NEW YORK STATE BAR ASSOCIATION**  
**Professional Ethics Committee Opinion**

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

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 The proposed fee agreement provides that the attorney must return his fee in whole if a client's funds are withdrawn in six months or less, and that half the fee must be refunded if withdrawal is made within a year.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.

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OPINION

This opinion represents a modification of Opinion 107 (1969) relating to referral fees received by lawyers from investment agents for placing clients funds in certificates of deposit with financial institutions. In that opinion the last sentence of the first paragraph stated:

"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."

It is the Committee's view that this sentence should be modified by deleting therefrom the words, "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" as unnecessary.

Opinion #108 - 6/10/69 (12-69)

Topic: Participation in foreign litigation without admission to foreign bar.

Digest: The drafting and filing of an answer by a New York attorney in an uncontested Florida divorce action without admission to the Florida bar

QUESTION

The client of a New York attorney is a defendant in a Florida divorce action. The defendant has agreed to file an answer in order to give the Florida court valid jurisdiction, but not to appear at the trial or otherwise contest the action.

Is it proper for the New York attorney, who is not admitted to the Florida bar: (1) to participate in such an arrangement; (2) to draw and mail an answer to the Florida court based on a form he has obtained from the plaintiff's attorney; and (3) to charge his client for such services?

OPINION

This Committee does not pass on questions of law, or the meaning and effect of Canons of Ethics of jurisdictions other than New York. With this in mind, it is the opinion of the Committee that:

1. It is not improper for an attorney to participate in an agreement for a defendant not to defend a divorce action if there is no misrepresentation of facts or fraud on the Court, and his client's best interests will be served thereby. It is assumed that the agreement is not unlawful in Florida. If the action is commenced on valid grounds, facilitation of the decree by a defendant is not improper, and a New York attorney is not subject to criticism for participating in the lawful dissolution in another jurisdiction of the marriage of a New York citizen (N.Y.City 96; N.Y.City 179; N.Y.City 241; N.Y.City 593; N.Y.County 100; N.Y.County 289; Drinker, Legal Ethics, pp. 122-126).