

Summary of ABA ethics opinions that address commissions/referral fees from nonlawyers

There have been several ABA ethics opinions issued on this topic. These include ABA Informal Opinion [1482](#) (1982), which briefly addressed *inter alia* the following question:

I. May a lawyer in the firm receive a commission from XYZ, Inc. (Where XYZ, Inc. is a client of the lawyer) in return for referring or recommending the services of XYZ, Inc. to an inventor client?

The Opinion stated:

One of the hallmarks of the legal profession is the obligation of a lawyer to exercise professional judgment solely on behalf of his client. The ability of a lawyer to obtain a commission from one client for referring another client to the first client could well work to impair the free judgment of the lawyer in deciding whether the services of the first client are needed by the second client.

However, a lawyer will not violate any Disciplinary Rule of the Model Code in recommending the services of one client to another client so long as the second client consents after the lawyer has made full disclosure of the financial relationship of the lawyer with the first client. DR 5-107(A)(2). *See also* ABA Formal Opinion 196 (1939), Formal Opinion 304 (1962) and Formal Opinion 331 (1972).

Formal Opinion 331 (1972), which discussed the topic of lawyer as agent for a title insurance company stated:

It is apparent that if the lawyer is financially interested in a title company which will supply title insurance to his client, he must obtain consent of his client after making full disclosure to the client of the circumstances

The Committee therefore holds that it is not a violation of the Code of Professional Responsibility, *per se*, for an attorney to act as agent for a title company and to be compensated therefor if such conditions are met.

Other ABA opinions on this topic are summarized in ABA Informal Opinion 1020 (1968) as follows:

The Committee held in Formal Opinion 196 (1939):

It is improper for an attorney to retain one-fourth of the charge for an abstract examination and forward three-fourths of the charge to an abstract company which performs the abstract examination unless such an arrangement is with full knowledge and consent of the client.

Again, in Informal Opinion 526 (1962), the Committee held:

The acceptance by a lawyer of a fee of one-half of one percent of the client's money invested with or through a lay organization would be a commission, compensation or rebate within the meaning of Canon 38, and if it were received without the knowledge and consent of the client after a full disclosure it would be unethical.

Finally, in Informal Opinion 680 (1963) the Committee held that it would be a violation of Canon 38 for a lawyer to accept a referral fee for recommending the placement of his client's funds in a particular savings and loan association unless his client knows and approves of such arrangement.

The Committee said in the Opinion:

It would be a violation of this Canon for a lawyer to accept payment for recommending ____, Inc., unless his client knew and approved of such payment. Even in that event, the lawyer is serving two masters, a position he should seek to avoid.

... Pertinent in this connection also are two unpublished Informal Opinions- 277 (1960) and 278 (1960). In 277 the Committee said:

A lawyer should not, even with the approval of his client, accept a commission from an insurance company which issued the policies for which the lawyer gave an advisory opinion.

And in Formal Opinion 278 (1948) the Committee said:

A lawyer may not accept a gratuity from anyone without his client's knowledge and consent, and if he does so the gratuity really belongs to the client, who, of course, may make the attorney's fee more generous by reason of it, but is not bound to do so.