

NEW YORK STATE BAR ASSOCIATION

Committee on Professional Ethics

Opinion # 627 - 3/19/92 (22-91)

Topic: Employment, conferring economic benefit upon client to obtain.

Digest: Lawyer may furnish rent-free office space to client in consideration of client's employment of lawyer.

Code: DR 2-103(B)

QUESTION

May a lawyer provide a client with rent-free office space in consideration of the client's employing the lawyer to render legal services?

OPINION

A mortgage company proposes to engage a lawyer to represent the company in all of its mortgage closings in a geographic area provided that the lawyer furnishes rent-free office space in the lawyer's office to the company. The lawyer asks whether he may do so ethically.

Answering this question requires that we interpret DR 2-103(B), which provides in pertinent part: "A lawyer shall not compensate or give anything of value to a person or organization to recommend or obtain employment by a client, or as a reward for having made a recommendation resulting in employment. . . ." If "person or organization" as used in this rule includes the client or would-be client, then the proposed arrangement would be improper, since the office space to be provided by the lawyer is something "of value."

While a literal reading of DR 2-103 (B) might produce this interpretation, we do not believe it is correct. The most natural interpretation is that the "person or organization" to whom compensation is forbidden is someone other than the client who employs the lawyer. Further, lawyers are supposed to provide something of value to the clients who engage them: namely, their valuable counsel and representation. The apparent purpose of DR 2-103 (B) is to prohibit the long-

condemned practice of employing "runners" and others to solicit employment for lawyers. See Judiciary Law §§ 479, 481-82. The evils associated with this practice are not present where the lawyer provides something of value directly to the client.

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This interpretation of DR 2-103 (B), of course, does not obviate the independent prohibition against a lawyer giving financial inducement to a client or prospective client to obtain employment in a litigated matter. DR 5-103 (B); Judiciary Law § 488 (2) .

Analyzing the proposed arrangement economically, the nominal fees that the lawyer charges for handling the mortgage company's closings are reduced by the fair rental value of the office space provided by the lawyer. Nothing in the Code prohibits a lawyer from reducing the fee the lawyer might otherwise charge in order to obtain professional employment . See N . Y . State 563 (1984) .

Therefore, we conclude that the arrangement proposed is not prohibited by DR 2-103(B), or any other provision of the Code. However, this opinion is limited to the specific question stated above. We do not attempt to answer here the myriad questions that could arise in the lawyer/client-landlord/tenant relationship that is contemplated. See, e.g., DR 3-102, DR 4-101, DR 5-104(A). Nor do we consider how the value of the office space that the lawyer provides to the mortgage company might affect the determination of the mortgage company's actual legal fee for a particular closing where the mortgage company's legal fee is to be paid by the borrower. Cf. DR 1-102(A)(4); N.Y. State 626 (1992).

CONCLUSION

For the reasons stated, and subject to the limitations set forth, the question posed is answered in the affirmative.

¹ Where a client or prospective client is a corporation, partnership or other entity, giving something of value to an officer, employee or anyone other than the entity itself, in order to obtain employment by the entity, would be prohibited by DR 2-103(B).