



NEW YORK STATE BAR ASSOCIATION

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New York State Bar Association Committee on Professional Ethics

Opinion 1043 (1/8/15)

Topic: Lawyer's Receipt of Referral Fee from a Real Estate Broker

Digest: A lawyer may not accept, as a referral fee, a portion of a real estate broker's commission in lieu of charging a fee to the lawyer's client.

Rules: 1.7(a)

FACTS

1. A lawyer represented an estate in the sale of real property through a real estate broker the lawyer had recommended to the executors of the estate. The broker has offered to pay the lawyer a referral fee of 25% of the broker's commission, which the lawyer proposes to accept in lieu of the lawyer charging legal fees to the estate for services rendered in the real estate transaction.

QUESTION

2. May a lawyer accept a referral fee from a real estate broker whom the lawyer recommended for a real property transaction in lieu of charging the lawyer's client for legal fees the lawyer would otherwise charge for legal services on the real estate transaction?

OPINION

3. We have long and consistently stated that a lawyer may not act as a lawyer and a broker in the same real estate transaction, with or without client consent, and whether or not the lawyer charges for legal services. *See, e.g.*, N.Y. State 916 (2012); N.Y. State 493 (1978); N.Y. State 340 (1974); N.Y. State 208 (1971). In N.Y. State 916, we explained: "The rationale of [our earlier] opinions is that the broker's personal and financial interest in closing the transaction interferes with the lawyer's ability to render independent legal advice with respect to the transaction consistent with the principles now embodied in Rule of Professional Conduct 1.7(a). Otherwise put, the problem primarily stems not from the fee the lawyer receives from rendering purely legal advice, but from the separate and independent financial interest of the lawyer/broker arising from compensation for the non-legal services."

4. This rationale applies as long as the lawyer has a financial interest in the real estate broker's commission, whether or not the lawyer is acting as a broker. The disabling conflict that these opinions identify is a lawyer's pecuniary interest in the broker's success and attendant commission, which irredeemably interferes with the lawyer's distinct obligation to exercise

independent professional judgment on the client's behalf. That the estate beneficiaries may benefit from the arrangement does not remedy this circumstance, any more than a lawyer/broker's waiving a legal fee, which is also of benefit to the client, can do so. Our conclusion is the same whether the broker's offer of compensation was made before or after the completion of the transaction.

CONCLUSION

6. A lawyer may not accept a referral fee consisting of a portion of a real estate broker's commission in place of charging a fee to the lawyer's client, even with a client's informed consent.

(32-14)