

# 38

## REFERRAL FEES

Adopted June 4, 1966.

Addendum issued 1995.

### *Syllabus*

It is improper for a lawyer to accept or another attorney to pay a referral fee unless such fee is based upon a division of service or responsibility after full disclosure to the client and his consent to the payment of such fee obtained.

### *Facts*

A lawyer in representing a client on a building and land development project is authorized by the client to get title insurance for purposes of a loan. The lawyer obtains a policy from a title insurance company. Because the lawyer can select one of the attorneys who will examine title for the title company, he receives a referral fee from the lawyer selected. His client does not know of the referral fee.

### *Opinion*

The Committee is of the opinion that the payment of the referral fee violates Canon 34, which provides that: “No division of fees for legal services is proper except with another lawyer, based upon a division of service or responsibility.”

According to the facts, the recipient of the referral fee did not perform any services or bear any responsibility for which the fee was paid. It is clear that accepting a fee for merely recommending another lawyer is a violation of this Canon. See, e.g., ABA Opinion No. 97 (1933).

Furthermore, even if the referral fee were proper, the failure of the attorney who accepted it to make full disclosure to and obtain the consent of his client would violate Canon 38, providing that: “A lawyer should accept no compensation, commissions, rebates or other advantages from others without the knowledge and consent of his client after full disclosure.” See ABA Opinion No. 304 (1962) (holding that a lawyer who receives a commission for recommending or selling title insurance without fully disclosing to his client his interest in the transaction is guilty of unethical conduct) and ABA Informal Opinion No. 883 (1965) (holding that a lawyer who may receive a rebate from title insurance premium paid by his client should disclose to the client the fact that he, the lawyer, may receive such a rebate and obtain the client’s consent).

### *1995 Addendum*

This Opinion was based upon the Canons of Professional Ethics, the predecessor to the Code of Professional Responsibility. The Colorado Rules of Professional Conduct became effective on January 1, 1993, replacing the Code of Professional Responsibility. While the language of the Rules is somewhat different from the Code and the Canons, the Ethics Committee considers this Opinion to continue to provide guidance to attorneys in this area. Attorneys are cautioned to review The Colorado Code of Professional Responsibility (found in the *Colorado Ethics Handbook*), to update the research contained in this Opinion and to conduct any independent research necessary.

Relevant provisions of the Colorado Rules of Professional Conduct, which should be examined together with this Opinion, are contained in Rules 1.5 (regarding fees); 1.6 (relating to confidentiality of information); 1.7(b) (regarding conflict of interest); 5.4 (regarding professional independence of a lawyer) and 7.2 (regarding advertising).