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**E-84-21     Lawyer practicing in interdisciplinary organization**

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**Facts**

A lawyer is considering becoming involved in an organization “to provide the public with an interdisciplinary approach to financial planning.” The organization would be composed of a lawyer, an accountant, a licensed securities broker and two life insurance agents and intends to offer itself to the public as a planning organization that works strictly on a “fee as a percentage of income basis.”

This organization would collect data, talk with the individual, discuss the individual’s options between and among the professionals involved and then make a series of recommendations to the individual over a broad range of financial planning possibilities. It would be contemplated that the disciplines of each of the professionals involved would be used to make the kinds of recommendations in areas traditionally dealt with by those professionals. However, it is felt that the interdisciplinary approach will allow a unified or complete plan.

**Question**

Presuming that there is no ethical problem with a lawyer becoming a part owner in such an organization and receiving a salary and/or dividends, or in the alternative, participating with this organization on an independent basis for a fee, what is the appropriate use of referrals and the division of fees in such an organization?

**Opinion**

Before questions concerning referrals and the division of fees may be addressed, the propriety of a lawyer being involved in an organization as discussed above needs to be examined. The Wisconsin Code of Professional Responsibility, codified in Chapter 20 of the Wisconsin Supreme Court Rules, states that a lawyer may not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law. SCR 20.20; *see* SCR 20.30(3). Accordingly, it would be improper for a lawyer to be a partner in the organization described above if any of his or her activities as a partner would

consist of the practice of law. *See Wis. Stat. sec. 757.30(2) (1981-82)* (definition of practicing law).

In the alternative, it is suggested that the lawyer's participation with the organization could be on an independent basis for a fee. However, in Formal Opinion E-61-1, 57 Wis. Bar Bull. 40, 41 (June 1984), the Committee on Professional Ethics stated that under no circumstance may a lawyer permit his or her professional services to be controlled or exploited by any lay agency or other intermediary by intervention between himself or herself and any client. The committee continued, a lawyer "shall avoid all relationships by which the performances of his duties may be directed by or *in the interest* of such intermediary" (emphasis added).

In addition to the above, there are several problems inherent in the proposed participation in this organization, even if it were on an "independent basis." First, SCR 20.09(3) states that a lawyer may not request a person or organization to recommend employment, as a private practitioner, of herself or himself. Participation in the organization, however, would be tantamount to a request for recommendations. Second, SCR 20.23(4)(a) states that the obligations of a lawyer to exercise professional judgment solely on behalf of a client requires that he or she disregard the desires of others that might impair his or her free judgment. *See SCR 20.23(1)*. It is certainly possible that a lawyer participant in such an organization could be subject to strong economic, political or social pressures by other professionals involved in the organization. In light of the fact that a lawyer should work solely for the benefit of the client, subjecting himself or herself to such pressures is highly undesirable.

Finally, SCR 20.21 states that a lawyer should preserve the confidences and secrets of a client. The purpose of the organization is to provide a "unified or complete" financial plan for clients whereby the clients' options would be discussed "between and among the professionals involved." Although clients may of course waive the attorney-client privilege, the situation presented involving discussions by a group of financial planning professionals would seem to require some form of "blanket consent" to disclosure of client confidences and secrets before effective assistance could begin. However, requiring such "blanket consent" before representation may begin is not permissible conduct. *See ABA/BNA Lawyers' Manual on Professional Conduct* (hereinafter *Lawyer's Manual*), at 55:503 (citing New York Lawyer's Association Opinion 173 (1919) and State Bar of Arizona Opinion 78-13 (1978)). Rather, SCR 20.22(2)(a)

requires “full disclosure” to a client of the effect of his or her consent to disclosure of confidences and secrets. In order to fully disclose such effects, the client’s representative must take the client’s individual circumstances into account. *Lawyers’ Manual*, at 55:502.

The ABA Committee on Ethics and Professional Responsibility has stated that clients consenting to disclosure of their secrets must have a full understanding of what they are being asked to consent to and further “that whether they consent is a completely voluntary matter with them, a consent which they can deny without a sense of guilt or embarrassment.” ABA Informal Opinion 1287 (1974); *see also* SCR 20.34(2)(h) and (i). Accordingly, requiring clients to consent to disclosure of confidences and secrets as a prerequisite to representation is unethical conduct. In addition, once representation begins, the client must be fully apprised of the effects of disclosure and must consent to disclosure whenever his or her representative seeks to disclose a different confidence or secret of the client.

In light of the above, it appears that it would be improper for a lawyer to be a part owner or to participate independently with a financial planning organization as described. Accordingly, it is unnecessary to specifically address the referral and division of fee questions posed.