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**E-86-3 Attorney/real estate broker: Fees and commissions, dual practice and conflicts of interest**

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**Questions**

Under what circumstances, if any, may a lawyer who also is licensed as a real estate broker ethically:

1. Accept compensation from a realtor for the lawyer's referral of a current client to the realtor whether or not sale of the real estate in question relates to the current representation (e.g., in a divorce action); and
2. Perform and be paid for both the brokerage and legal services for a client in, for example, a divorce or probate matter?

**Opinion**

Nothing in the Code of Professional Responsibility, SCR Chapter 20, expressly precludes a lawyer from representing a client in the same matter as lawyer and realtor. *See generally Annot.*, 23 A.L.R. 4th 230, regarding dual licensing as attorney and broker. This committee previously has acknowledged the propriety of dual practices and has set forth suggested guidelines regarding their conduct. *See, e.g.*, State Bar Committee on Professional Ethics, Formal Opinion E-82-11, 57 Wis. Bar Bull. 77 (June 1984). Formal Opinion E-83-14, 57 Wis. Bar Bull. 85 (June 1984); and Formal Opinion E-85-5, 58 Wis. Bar Bull. 68 (Oct. 1985).

1. Regarding the ethical propriety of a lawyer/real estate broker's receipt of a commission or other compensation for referring a current client to a realtor®, the committee concludes that although it is permissible for a lawyer to receive such a "referral fee" if the client expressly consents at the time of the referral, it is fraught with inherent conflicts of interest. *See generally* SCR 20.23(1) and (2), 20.24(1) and 20.27(1). Furthermore, client consent to such a "rebate" from a realtor® must be based on full disclosure of all matters which could bear on the client's decision.

2. Regarding the ethical propriety of a lawyer's acceptance of both legal and brokerage fees for providing both services—when the real estate transaction related to other representation that the lawyer is providing the client (*e.g.*, in a divorce action or probate proceeding)—the committee concludes that, with the informed consent of the client, a lawyer may accept compensation for both services. However, the total compensation for the combined services must be reasonable. *See generally* SCR 20.12(1) and (2); *Disciplinary Proceedings against Kinast*, 121 Wis. 2d 25, 357 N.W.2d 282 (1984). *See also* sec. 857.05(3), Wis. Stats. *But see, e.g.*, Illinois State Bar Association Committee on Professional Ethics Opinion 862, *Lawyers' Manual* at 801:3018-3019.

Furthermore, the lawyer's conduct in providing both the legal and realtor's services should be governed by SCR Chapter 20, the Code of Professional Responsibility, and other laws governing Wisconsin attorneys' conduct. *See, e.g.*, Ethics Committee Opinion E-82-11, *supra*. Accordingly, the committee withdraws its Memorandum Opinion 1/76, 57 Wis. Bar Bull. (June 1984) at page 100.