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## Wisconsin Formal Ethics Opinion E-00-04: Fee to Lawyer for Recommending Service Providers

January 31, 2001

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*Professional Ethics Opinion E-00-04 considers whether lawyers may accept fees for recommending service providers to their clients.*

### **May a lawyer accept a fee for recommending the services of a nonlawyer to a client during the course of representation?**

#### **Opinion**

When lawyers represent clients, certain types of service other than legal representation are necessary to advance the client's interests. In such circumstances, lawyers commonly are called upon to recommend one or more service providers to their clients. To encourage such client referrals, some service providers offer monetary payments, commissions, referral fees, or other consideration to lawyers.

The Rules of Professional Conduct explicitly prohibit lawyers from giving anything of value to any person for recommending the lawyer's services. See [SCR 20:7.2\(b\)](#). The rules also prohibit lawyers from sharing fees with nonlawyers. See [SCR 20:5.4\(a\)](#). The rules, however, do not per se prohibit lawyers from receiving anything of value for recommending another's non-lawyer services to their clients. It may be argued that the cost of these referral fees is not borne by clients, but comes out of the service provider's revenue. The underlying economic facts of the transaction may or may not support such an assertion. However, a referral fee paid to a lawyer that, in substance, increases the client's costs violates the Rules of Professional Conduct as an impermissible sharing of legal fees with a nonlawyer. See [SCR 20:5.4\(a\)](#). In such cases, the nonlawyer service provider is collecting fees for the lawyer's benefit.

In recommending another's services to a client, a lawyer is acting within the scope of the lawyer-client relationship. Clients seek and place a high degree of trust in such recommendations by their lawyers. They expect such recommendations to be considered, competent, objective, and free of conflicting interest. The Rules of Professional Conduct express and protect these reasonable expectations. See [SCR 20:1.1](#), 1.4, 2.1, and 1.7(a). When a lawyer receives consideration for referring a client to a particular service provider, the potential exists that the lawyer's independence and objectivity may be compromised by the lawyer's own interests. A lawyer must be especially scrupulous in protecting his or her client from the inherent risk of exploitation in such an arrangement.

Should the lawyer continue to represent the client, the lawyer must determine that his representation of the client will not be adversely affected by the referral arrangement. See [SCR](#)

[20:1.7\(b\)](#). For example, such an arrangement cannot restrict the lawyer's advice so that the client does not receive information or opinions needed to make fully informed decisions about the representation. See [SCR 20:1.4\(b\)](#) and [2.1](#). The existence of such an arrangement may also preclude the lawyer from continuing to represent the client if the representation would involve monitoring or evaluating the service provider's work from which the lawyer is receiving or may receive consideration for referrals. See [SCR 20:1.7\(b\)](#).

Whenever a lawyer receives compensation or other consideration for a referral to another service provider, the lawyer must fully disclose to the client the nature and extent of any such benefit she will receive and the advantages and disadvantages to the client of the referral compared to any reasonably available alternatives. To the extent the lawyer may reasonably know, this disclosure includes such factors as relative cost; suitability to the client's needs; and the competence, character, and reputation of the person to whom the lawyer refers the client. This also requires the lawyer to evaluate the merits of the particular service provider and the likelihood that the client will benefit from that person's particular services. This degree of disclosure is meant to assure that the client's decision regarding accepting the lawyer's recommendation is suitably informed. A lawyer may make such a recommendation only when the lawyer reasonably believes that the services of the service provider is compatible with the client's best interests.

A lawyer's duty to render uncompromised independent professional advice to a client takes precedence over any benefit the lawyer may realize from recommending a service provider to a client. Where consideration for a referral to another service provider is nominal, the likelihood that the lawyer's recommendation will be unduly influenced is probably small. However, the committee notes that the benefit or other consideration a lawyer may obtain for referring a client could be so substantial as to preclude a reasonable belief that the referral was uninfluenced by the lawyer's own interest in securing that benefit. A lawyer cannot receive so substantial a benefit for referring a client to another professional. The determination of what would constitute so substantial a benefit can only be determined based on all the facts on a case by case basis.