
**E-93-6 Retaining financial planner to assist in
estate planning**

Question

Is it permissible for lawyers who provide estate planning services to their clients to retain the services of a financial planner, with the client's knowledge and consent and at a reasonable fee, to perform the following services:

- 1) develop in conjunction with the client an inventory of the client's assets;
- 2) assist in exploring various estate planning options; and
- 3) witness any documents that are executed?

Opinion

Yes, if the arrangement with the financial planner is consistent with the requirements of SCR 20:5.4 and 20:7.2(b) and does not involve a conflict of interest. In addition, the lawyer must "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer." SCR 20:5.3(a) One of the most important of these obligations is that of confidentiality. SCR 20:1.6.

SCR 20:5.4 prohibits a lawyer from sharing fees with a nonlawyer, forming a partnership with a nonlawyer if any of the activities of the partnership constitute the practice of law, or permitting a person who recommends a lawyer to direct or regulate the lawyer's professional judgment in rendering legal services. To be permissible, the arrangements with financial planners should provide for separate and discrete billing for the services provided by the lawyer and financial planner. In addition, the lawyer must insist that there be no interference with his or her independent professional judgment in providing estate planning services to the client. While the financial planner might make suggestions as to the client's plan, the final responsibility for the plan must rest with the lawyer.

Under SCR 20:7.2(b), a lawyer may not give anything of value to a person for recommending the lawyer's services. Thus, if clients are referred to the

lawyer by the financial planner, the lawyer may not promise to channel work back to the financial planner in exchange for the referral. Besides violating SCR 20:7.2(b), arrangements of this sort would involve a conflict of interest in that the lawyer is receiving a personal benefit (that is, the referral of the client) in exchange for persuading the client to hire the financial planner to perform additional work. *See* SCR 10:1.7(b). Thus, an arrangement with a financial planner that called for mutual referrals would raise serious issues under SCR 20:7.2(b) and 20:1.7(b).