
1/64 Commissions and rebates

Canon 38, of the Canons of Professional Ethics of the American Bar Association, adopted by the State Bar of Wisconsin, states “A lawyer should accept no compensation, commissions, rebates or other advantages from others without the knowledge and consent of his client after full disclosure.”

This Canon, coupled with Canon 6, requiring the lawyer to refrain from representing conflicting interests without full disclosure to his client, and to refuse to accept retainers or employment from others in matters adversely affecting his client’s position, fairly well define the lawyer’s duty in the event he is offered a commission for a little insurance company for recommending business to them, or a reward of a “finder’s fee” from a mortgage institution where he represents a client in a real estate purchase.

In an informal opinion in 1958, the State Bar Committee on Professional Ethics held that it was unethical for an attorney to retain any form of discount, commission or collection fee, unless it was with full knowledge and complete approval of the client.

Opinion 196, of the American Bar Association Committee on Professional Ethics and Grievances, enunciates the same rule in condemning the practice of a lawyer accepting a 25 per cent discount from an abstractor while billing his client at the full charge made by the abstractor.

Two different principles are involved in the application of Canon 38, according to Drinker on *Legal Ethics*, Columbia University Press, at pp. 96-97: “First, that a lawyer shall receive no secret remuneration from the other side; second, that he must not, by accepting or bargaining for any compensation from the other side, even if it is fully disclosed to his client, put himself in a position which will interfere with his wholehearted duty to his client.”

In cases in which the lawyer discloses a commission or rebate from an outside source to his client, and there would be no interference with his loyalty to his client, the acceptance should unquestionably affect the size of the lawyer’s fee. (Note: Under DR 5-107(B), the opinion would be the same.)