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


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.