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(FINAL)

ETHICS ADVISORY PANEL  
OPINION #93-54, REQUEST #395  
Issued July 28, 1993

The attorney is a registered general securities agent and a registered investment adviser. The attorney asks whether he/she may, acting solely in the capacity as an investment advisor, pay a referral fee to a referring attorney from funds derived from a commission paid as a result of a client using investment services.

Rule 5.4 entitled "Professional Independence of a Lawyer" states that:

(c) A lawyer shall not permit a person who recommends, employs or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

Rule 1.8 entitled "Conflict of Interest: Prohibited Transactions" provides that:

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client consents after consultation;
- (2) there is no interference with the lawyers independence of professional judgment or with the client-lawyer relationship; and
- (3) information relating to representation of a client is protected as required by Rule 1.6

The Panel opines that the investment advisor attorney may not pay another attorney a referral fee from the proceeds of a commission pursuant to the Rules cited above. In addition Rule 8.4(a) entitled "Misconduct" states that "It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so , or to do so through the acts of another; . . . " Even though the inquiring attorney is acting as an "investment advisor," he/she must still abide by the Rules of Professional Conduct whatever the circumstances.

The Panel's guidance is restricted to interpretations of the Rules of Professional Conduct and does not extend to issues under the State Ethics Code or any other rules, regulations or laws that may have bearing on the issue raised by this inquiry.