

R. C. Riter
E. D. Mayer
Robert D. Hofer
Robert C. Riter, Jr.

Law Offices
RITER, MAYER, HOFER & RITER
Professional & Executive Bldg.
319 S. Coteau St.
P.O. Box 280
Pierre, South Dakota
57501-0280

Telephone
605-224-5825

Jerry L. Wattier

Ernest W. Stephens, Retired

May 3, 1988

Re: Ethics Opinion 88-4

You have submitted the following inquiry to the Ethics Committee:

Your partner has been contacted by a financial services company who wants to sell wills to its clients. Once the client bites, the company sends a form to the client which is filled out and returned to the company. The company then sends the filled out questionnaire to the attorney who does the will. The attorney and the financial company split the fee. You inquire as to whether this Committee believes such conduct is ethical.

Presumably, customers will be told that the will shall be prepared by an attorney selected by the company. There is no indication that the customer ever meets the attorney and might well not even know his or her name.

In our opinion, the proposed practice violates the standards of professional responsibility as follows:

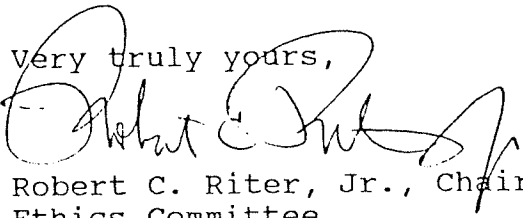
There is no question the attorney is involved in the practice of law as legal instruments are being prepared. The compensation received by the attorney is a legal fee which cannot be shared with a non-lawyer. (DR 3-102(a) and Model Rule 5.4) Additionally, while it does not appear the relationship between the attorney and the company is a partnership, the spirit of DR 3-103(a) is also violated. You might also see Model Rule 1.5 and 7.2(c).

The proposed agreement also appears to raise some questions about a conflict of interest or divided loyalty. DR 5-102, 105, DR 7-101 and Model Rule 1.7. This is as the services are provided to the company and the compensation is received from the

company, however, the work is performed for the benefit of the client. If the client did consent after full disclosure this conflict might well be waived, however, that is not indicated from the facts presented.

Additionally, since the factual information is provided to the attorney through the company, a question may be raised whether there is a violation of confidential communications between the client and the attorney.

Hence, the Committee believes that the practice proposed would not be acceptable.

Very truly yours,

Robert C. Riter, Jr., Chairman
Ethics Committee