

Taking a Piece of a Client's Business as Payment

What are the ethical rules about me taking a percentage interest in a client's business in exchange for legal work?

Three ethical rules are implicated here. 1.8a, 1.5 and 1.7.

Rule 1.8a

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

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And...

Rule 1.5

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

And, of course, any conflicts of interest which might arise from this arrangement. (Rule 1.7)

Michael Jack Kaczynski, Connecticut

Take a look at the following link that discusses the concept of acquiring equity interest in exchange for legal services, as well as the ethical considerations of doing same:

<http://www.atgf.com/tools-publications/pubs/june-2001-atgcarticlestaking-equity-interest-client-it-worth-risk>.

Hope that helps -- good luck!

Best regards,
Joseph D. Kamenshchik, New York

SoloSez Popular Threads, March 2013

Ethical or not it is a supremely stupid idea.

James Moriarty, Iowa

That may be, but out here in Sili Valley, its done all the time -- by some really big firms. I have always thought the same as you. But these big firms are, well, big and rich, and they leave us poor solo's to take the blame for the absolute conflicts presented by that view.

Joseph Melino, California

After reading everyone's comments and discussing with the client, he's paying cash.

But if he creates the next Google or Facebook (it's not a tech company at all), I'm gonna be coming after some of you.

I know a lawyer down in Miami that will take their car, motorcycle, jewelry, Rolex, fur coats... His house is like a pawn shop

Michael A. Huerta, New York

On 3/4/13 8:52 PM, Joseph Melino wrote: " That may be, but out here in Sili Valley, its done all the time -- by some really big firms. I have always thought the same as you. But these big firms are, well, big and rich, and they leave us poor solo's to take the blame for the absolute conflicts presented by that view." Amen, Joe. It doesn't take too many years in the trenches before you come to the realization that equality before the law is largely a myth. I've seen the principals of a large well-connected, well-monied PI firm spend time in the penalty box (two year suspensions for unethical behavior) come out of that experience with their firm undisturbed, their money stream unaffected, hailed by their local law school as "outstanding citizens" (for their \$1 M contribution) - and a full write-up in "Super Lawyers". As my small-time contractor father used to say, "There are two sets of rules in this world - and which set of rules applies depends upon who you are and how much money you have."

Rod Klafehn, New York
