LEGAL ETHICS OPINION 1764
ATTORNEY FEE SHARING WITH FINANCE COMPANY

You have presented a hypothetical in which an attorney accepts a case for a fixed fee. The retainer agreement states that the fee is due in full at the start of the case. The attorney plans to make arrangements with a finance company to pay the attorney at the start of the case the full amount of the fee, minus a discount to be kept by the finance company. The client would be obligated by contract to make monthly payments to the finance company until completing the contractual obligation, which includes the full amount of the attorney's fee plus interest. For example, at the start of each case the finance company will sign an installment contract with the client for $5000 plus interest and will then pay the attorney a discounted lump sum of $4000.

Your request asks three questions about this scenario: 1) must the law firm place the initial payment by the finance company into the firm trust account; 2) if the client falls behind on payments to the finance company, is the attorney obligated to continue working on the client's case; and 3) if the case is terminated before completion of all of the work on the case, is the lawyer obligated to refund any of the fee.

The appropriate and controlling disciplinary rule relative to your inquiry is:

RULE 5.4 Professional Independence Of A Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased, disabled, or disappeared lawyer may pay to the estate or other representative of that lawyer that portion of the total compensation that fairly represents the services rendered by the deceased, disabled or disappeared lawyer; and

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

In reviewing the arrangement in this hypothetical, the committee notes a basic ethical problem in the proposed agreement. This arrangement calls for the finance company to receive a portion of the attorney's legal fee. Except in three narrow exceptions not applicable in this instance, Rule 5.4(a) prohibits a lawyer from sharing his fee with a non-lawyer. This committee has found arrangements similar to that proposed in this hypothetical to be violative of that concept. *See*, LEO1047 (attorney's fee may not be shared with a group of medical experts), 1438 (attorney's fee may not be shared with an advertising firm), & 1676 (attorney's fee may not be shared with an electronic tracking firm). The committee opines that, in line with those opinions, while the attorney may arrange for the client to pay interest to the finance company, the attorney may not agree to provide the finance company with a portion of his fee.

As the specific finance agreement contemplated in this hypothetical is impermissible under the Rules of Professional Conduct, the questions raised regarding implementation of this agreement need not be addressed. However, the committee notes that most issues involving legal fees and attorney trust accounts are squarely addressed in LEO 1606, which explains, for example, that an advanced legal fee paid to an attorney must remain in the attorney's trust account until the attorney has performed the corresponding services.

This opinion is advisory only, based only on the facts you presented and not binding on any court or tribunal.

Committee Opinion
May 6, 2002