Committee Opinion
May 31, 1988

LEGAL ETHICS OPINION 1071 REPRESENTING A CLIENT WITHIN THE BOUNDS OF THE LAW.

You advise that in August, 1986, "X" was involved in an automobile accident with "Y". "Y" was charged with following too close and it is believed that he is the negligent party in the action. On the date of the collision "X" was employed and was on his employer's business at the time of the accident. He was, therefore, entitled to receive workers' compensation benefits for his personal injury. Company "A" is the workers' compensation insurer for "X"'s employer. Company "A" accepted "X"'s claim and began paying benefits. In October, 1987, Company "A" asserted subrogation rights against "Y". "Y" acknowledged receipt of same by signing a certified return. In October, 1987, Company "A" received no contact from "Y" and referred the matter to you in January, 1988, requesting that you take whatever action necessary to protect the amount of Company "A"'s lien. You immediately forwarded a demand letter to "Y" and received no response. You then generated a warrant in debt against "Y", which was to leave your office at the end of March, 1988. A day before you were to send the warrant in debt, you received a copy of a medical report on "X" indicating that he had an attorney representing him on the personal injury case. You immediately called Company "A", and they indicated that this was the first notice that they had received that "X" was, in fact, represented. On this same date, you called the attorney for "X" and advised him of your involvement. You were informed by "X"'s attorney that suit had been filed in December, 1987 against "Y". You explained that you were ready to file an independent action to protect Company "A"'s workers' compensation lien. You discussed with the attorney two strategic options on how to proceed with your lien: (1) Company "A" could file an independent action and have it consolidated with "X"'s attorney's case wherein Company "A" would be an additional party plaintiff, or (2) the attorney for "X" could agree to protect 100 percent of your workers' compensation lien, without taking any attorney's fees for himself if you do not intervene in the suit.

You state that your intentions were that from a trial-strategy standpoint it does not present the best image for an insurance company to be a co-plaintiff. You felt the issues would be muddied and the jury would be confused as to the issues of insurance. You recommended option two to the attorney and "X"'s attorney thought this suggestion was unethical and threatening. You further state that you explained that you had a legal right to file an independent action and intervene in the case to protect your client's interests, and that you would be entitled to a reasonable attorney's fee if recovery was made. You explained that you would forego this action if he agreed to protect 100 percent of your client's claim, not taking any attorney's fees for himself. You state that you explained to the attorney for "X" that if you intervene you would clearly be entitled to the fee, but if this was going to hurt his case or muddy the waters for the jury, you would forego the action if he agreed to pay your client what they would otherwise be entitled to.

It is the opinion of the Committee that you have probably not committed any violations of the Code of Professional Responsibility. However, the Committee urges that you look closely at §§ 65.1-41 through 65.1-43 of the Va. Code, as well as at DR:7-102(A)(1) and

(2) and DR:7-101 of the Code of Professional Responsibility. If your intent was solely to protect your client's interests, and your method of proceeding was known to your client and it either directed or approved of same, then the Disciplinary Rules would not have been violated.

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