Committee Opinion
November 15, 1988

LEGAL ETHICS OPINION 1155

ACQUIRING AN INTEREST IN LITIGATION – PERSONAL INJURY REPRESENTATION: ASSISTING CLIENT TO OBTAIN LOAN FROM FINANCE COMPANY.

You advise that you have represented personal injury clients for many years and are confronted 90 percent of the time with an innocent victim of an automobile accident who has incurred unanticipated medical bills and injuries which have put him or her out of work. In almost half of these cases, your clients do not have the benefit of health insurance or disability insurance. You are also confronted daily with requests for a loan from your clients in order to obtain proper medical treatment and medication so they may continue to pay their mortgages as well as provide food and other necessities for their families. On numerous occasions, you have referred your clients to banks to obtain loans; however, due to the loss of their jobs as a result of their injuries, they are poor credit risks and it is virtually impossible for them to obtain loans. There being no other alternative, you attempt to obtain liens against your clients' cases to provide them credit which, in most cases, the landlords and hospitals simply reject.

You have asked the Committee to consider the propriety of your persuading a finance company to agree to loan funds ranging from $1,000 to $10,000 to personal injury clients who cannot get bank loans. You have proposed that the company would investigate the case to confirm the liability, damages, and insurance coverage with the client's written consent. If the investigation revealed facts or evidence pertinent to the case which the client's attorney did not already know, said facts would be conveyed to that attorney at no expense. If the loan is approved, the loan would become due upon resolution of the case either by settlement or trial and the borrower would be charged at a lawful interest, similar to that used by major credit card companies. Upon obtaining a favorable settlement or verdict the client would direct the attorney involved to repay the loan out of the case proceeds. In no way would the attorney guarantee, cosign, or be responsible for the loan, except that he would honor a lien on the case.

The Committee believes DR:5-103(B) is the appropriate and controlling rule relative to your inquiry, and it provides as follows:

> While representing a client in connection with contemplated or pending litigation a lawyer shall not advance or guarantee financial assistance to his client, except that the lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, *provided the client remains ultimately liable for such expenses* (emphasis is added). (See also LE Op. 773)

The Committee would also direct your attention to Professional Guidance Opinion No. 86-36 from the Philadelphia Bar Association, which states that a lawyer may not act as guarantor for a bank loan for his client; however, he may attempt to convince the bank to grant the loan and to take a security interest in the client's personal injury case.

Under the facts as you have presented them in your inquiry, the Committee opines that there would not be a violation of Disciplinary Rule 5-103(B) as long as the attorney does not guarantee or cosign for the loan.

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