

LEGAL ETHICS OPINION 1254

PERSONAL INTERESTS CONFLICT:
CRIMINAL LAW ATTORNEYS
OWNING INTEREST IN BAIL BOND
BUSINESS AND REFERRING CLIENTS
TO BUSINESS.

You have asked the Committee to consider the propriety of three attorneys, all of whom practice criminal law but who are not partners or associated in a law firm, forming a corporation to engage in the bail bond business. The three attorneys would own the majority of the stock with the remainder of the stock being owned by non-lawyers. The three attorneys would not be actively engaged in the business nor would they be officers of the corporation. The major factor the three attorneys would be contributing to the corporation would be assets to permit substantial bonding authority.

In addition, concurrently with the bail bond business the nonlawyers/active partners would have a retail business and/or pawn shop. For the purposes of this opinion, the Committee will assume that the underlying issue forming the basis of this inquiry is the permissibility of the attorneys referring their criminal defendant clients to the bail bond business.

The Committee has previously opined, and it is well established, that it is not improper for an attorney who is a limited partner, stockholder, officer or director of a corporation such as a title company or realty corporation or court reporting firm to refer his clients to that firm for their services provided the attorney discloses his personal or ownership interest in the firm so that his client is able to make an informed decision and may consent to the continued representation. An attorney cannot ethically or legally undertake representation of a client when the attorney has personal interests which are not compatible with those of the client, unless the attorney fully discloses those interests to his client and the client consents thereto. Disciplinary Rule 5-104(A) [DR:5-104] provides that a lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full and adequate disclosure under the circumstances, and provided that the transaction is not unconscionable, unfair or inequitable when made. The Committee further opined that any doubts regarding the sufficiency of the disclosure must be resolved in favor of the client and against the attorney since it is the attorney who seeks to profit from the advice given his client. (See LE Op. 187, LE Op. 1131 and LE Op. 1198 and DR:5-101(A))

In addition, if the attorney wishes to represent the legal affairs of the bail bond business, he may do so as long as the attorney's professional judgment on behalf of the client/business is not affected by his financial interests in the entity. (See LE Op. 1027 and LE Op. 1198) Furthermore, if an attorney/client relationship is established on behalf of the bail bond business, the attorney may not continue the representation of the client/criminal defendant for whom the bail bond business will underwrite a bond while simultaneously representing the business since the Committee believes it is not obvious

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that the lawyer can adequately represent the interest of each because the exercise of his independent professional judgment on behalf of the client will be or is likely to be affected by his representation of the bail bond business. (See DR:5-105(B), (C))

Finally, the Committee directs your attention to DR:2-103(D) which provides that a lawyer “shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client, or as a reward for having made a recommendation resulting in his employment by a client, except that he may pay for public communication permitted by DR:2-101.”

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Legal Ethics Committee Notes. – L E Op. No. 1343 indicates that the lawyer may not represent the criminal in the matter on which the bonding company has supplied the bond. Under Rule 1.8(a), a lawyer may not enter into a “business transaction” with a client unless the client is given an opportunity to seek independent advice, and there has been full disclosure and consent in writing.