

Committee Opinion
October 3, 1989

LEGAL ETHICS OPINION 1269

ACQUIRING AN INTEREST IN
CLIENT'S MATTER – BUSINESS
TRANSACTIONS BETWEEN
ATTORNEY AND CLIENT – PERSONAL
INTEREST: ATTORNEY MAKING
LOANS TO CLIENT.

You have advised that you represent an injured client whose medical bills have been paid by his insurance carrier, but who has not been able to earn significant income to meet his living expenses. You further indicate that the client has no other source of income pending disposition on his claim. Your client will probably lose an additional six weeks of income during surgery and recuperation. You indicate that you have arranged for a third party to loan your client up to \$7,000 at 12% interest, under the terms of which loan the lender will be designated as a beneficiary under your client's life insurance policy and the client agreed to have any remaining outstanding debt act as a lien on any recovery made on the personal injury matter. Finally, you advise that the loan will not be contingent on any recovery but will remain the personal obligation of the client regardless of the outcome of the cause of action.

You have inquired as to the propriety of the terms of the loan as outlined and have further inquired as to the propriety of your loaning a client money pursuant to the same terms.

With regard to your first question, the Committee believes that prior LE Op. 1155 is dispositive of the issue.

With regard to your second question, the appropriate and controlling disciplinary rules are DR:5-103(A) and DR:5-104(A). Under DR:5-103(A), a lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation he is conducting for a client. A lawyer may, however, acquire a lien granted by law to secure his fee or expenses; and may contract with the client for a reasonable contingent fee in a civil case. Under DR:5-104(A), a lawyer may not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to (continue to) exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure and provided that the transaction is not unconscionable, unfair or inequitable when made.

The Committee is of the opinion that loans made to clients for assistance with living expenses during the course of litigation constitute the lawyer's entering into employment and a business transaction that would allow his professional judgment to be affected by his own financial interest; thus such conduct would be improper and violative of both DR:5-103(A) and DR:5-104(A). The rule against a lawyer acquiring an interest in a client's litigation is based on concerns about compromised loyalty to the client in pursuing a result which should be in only the client's best interests. The lawyer's acquisition of a personal interest in the outcome of the litigation may result in the

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lawyer's independent judgment on behalf of his client becoming clouded by his interest in recouping his own funds.

In addition to the prohibition against a lawyer acquiring a proprietary interest in the litigation through the making of a loan to a client, the Committee is of the opinion that such a loan would create an improper adverse relationship between the lawyer as creditor and the client as debtor. The client's consent as described in DR:5-104(A), which, in other circumstances, might cure the conflict, would not suffice to alleviate the impropriety created by the violation of DR:5-103(A).

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