Committee Opinion
June 13, 1990

LEGAL ETHICS OPINION 1360

APPEARANCE OF IMPROPRIETY: LAW FIRM CONTRIBUTING TO ELECTION CAMPAIGNS OR MEMBER OF CONGRESS; REPRESENTING CLIENTS BEFORE THE GOVERNING BODY OR ELECTED OFFICIAL TO WHICH CONTRIBUTION WAS MADE.

You have inquired as to the propriety of some Virginia law firms setting up political action committees ("PACs") to contribute to election campaigns, or paying a substantial sum as an honorarium to a member of Congress as payment for a speech. You indicate your assumption that some lawyers or law firms which make campaign contributions in cash or in professional services, or which pay sums of money beyond fair market value for speeches or written materials, appear before the same elected official, or the governing body of which the official is a part, on behalf of one or more of the law firm's clients.

The appropriate and controlling Disciplinary Rule relative to your inquiry is DR:9-101(C), which prohibits a lawyer from stating or implying that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official. Further guidance is provided in Ethical Consideration 9-4 [EC:9-4] which states:

Because the very essence of the legal system is to provide procedures by which matters can be presented in an impartial manner so that they may be decided solely upon the merits, any statement or suggestion by a lawyer that he can or would attempt to circumvent those procedures is detrimental to the legal system and tends to undermine public confidence in it.

Although the Committee is not constituted to determine any legalities involved in either the establishment of PACs or payments to public officials made by PACs or in the form of honoraria, the Committee directs your attention to Ethical Consideration 1-5 [EC:1-5] which exhorts that "[b]ecause of his position in society, even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession." Thus, should such operations or payments be found to be violative of the law, a lawyer should not participate in them. In previously affirming that it was improper for an attorney to lobby before the General Assembly or other legislative body when a lawyer with whom he shares a professional relationship is an elected member of that body, the Committee found that compliance with the Act regulating the legality of such appearances would not obviate the need for the lawyer to adhere to the ethical obligations of the legal profession. (LE Op. 1278, LE Op. 537, LE Op. 419)

The Committee has earlier opined that even where the existence of a particular set of circumstances does not cause a per se violation of DR:9-101(C), those circumstances may imply that the interests of an attorney's client may be enhanced for improper reasons. LE Op. 1203. It is the opinion of the Committee that a lawyer may not suggest or imply the ability to obtain results through improper governmental influence or political power.

The Committee is of the further view that it is axiomatic that such suggestion or implication alone would be improper, regardless of whether the lawyer making such suggestion intends or attempts to perform the act suggested, and further, regardless of whether the matter's outcome is actually affected. Mississippi Attorney v. Mississippi State Bar, 453 So.2d 1023 (1984). Conversely, it is the Committee's view that no violation of DR:9-101(C) occurs where a lawyer or law firm either creates or contributes to a PAC or pays honoraria in excess of fair value for a legislator's presentation or written material, but makes no suggestion or implication to a client of an intent to improperly influence the legislator. In re Connaghan, 613 S.W.2d 626 (Mo. 1981).

The question of whether the establishment of PACs or payment of honoraria by lawyers or law firms is done to suggest to clients the lawyer's intent to exert improper influence on the legislator requires a factual determination beyond the purview of the Committee.