

Committee Opinion  
January 6, 1992

LEGAL ETHICS OPINION 1441

ACQUIRING AN INTEREST IN  
CLIENT'S MATTER — CONFLICT OF  
INTEREST: ATTORNEY MAKING  
LOANS TO FINANCE COMPANY  
WHICH MAKES LOANS TO  
ATTORNEY'S PERSONAL INJURY  
CLIENTS.

Attorney A, who represents personal injury plaintiffs, occasionally refers clients to Corporation X (X), a Virginia corporation engaged in extending credit to injured persons while they are awaiting resolution of their tort claims to recover damages for their injuries. The credit line is evidenced by a personal note from the plaintiff secured by an assignment of the proceeds from the claim and is due and payable in full at the time of settlement. Attorney A does not guarantee, nor obligate himself or his firm in any way, for the repayment of the credit extended to his client, but is obligated to acknowledge the assignment and disburse to X the funds to repay the note from the proceeds of the settlement. Attorney A may also be asked to oversee the execution by his client of the credit documents from X and also furnishes information, with his client's authorization, to X relative to the claim, which information later becomes the basis for the credit determination. Attorney A receives no fee or other compensation from X for these services, nor will he provide any legal advice or services to X or have any input into X's decision with regard to the establishment of the credit limit.

Attorney A desires to lend money to X and indicates that no portion of those funds being loaned to X by A will be earmarked for A's clients, nor will A have any influence upon X's decision as to how any of the funds are utilized. None of X's receivables from A's clients will be assigned to A as security for his loan nor will A receive any corporate stock or other form of ownership interest in X. The only benefit A will receive from the loan is the payment of interest which will be equal to that which X would pay to any other lender under similar circumstances. A will not be a member of X's board of directors or advisory board. Finally, it is indicated that all such exclusions from any direct or indirect management, control, or influence over the operations and business decisions of X will also extend to A's family, other relatives, and members and employees of his firm.

The Committee has been asked to opine whether, under the facts of the inquiry, it would be proper for A to make such a loan to X and whether such a loan to X made by A's spouse or A's employees would be proper as to A.

The Committee opined that A's loan to X is a means by which A has provided indirectly what he may not provide directly, i.e., financial assistance to his client in connection with litigation. The Committee also views such an arrangement as a means by

which A has also acquired indirectly what he may not acquire directly, i.e., an interest in the client's litigation matter. The Committee opined that, despite the controls proposed, it would be improper and violative of DRs 5-103(A) and (B) and 5-101(A) for A, his spouse or employee, to make a loan to X corporation unless X agrees to make no loans to A's clients during A's representations of those individuals or entities. [DR:5-101(A), DR:5-103(A) and (B); LE Op. 1155, LE Op. 1379.]

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