Committee Opinion
February 9, 1993

LEGAL ETHICS OPINION 1471 — ZEALOUS REPRESENTATION - TRUST ACCOUNTS: DISBURSING CLIENT'S PROCEEDS TO CREDITOR OF CLIENT.

You have presented a hypothetical situation wherein X Corp., a Virginia corporation, makes cash advances to plaintiffs involved in personal injury tort actions. As security for these advances, including accrued finance charges and related fees, X Corp. receives a security interest in and an assignment of proceeds of the claim under the terms of a Security Agreement and Assignment executed by the plaintiff prior to receiving any funds. You advise that the attorney has no pecuniary interest in X Corp. either as an investor or lender. Your letter of December 18, 1992 indicates that, although plaintiff's attorney is not a party to the contract between X Corp. and the plaintiff, and does not sign any of the credit documents, he does acknowledge in writing receipt of the Security Agreement and Assignment and agrees that he will carry out certain provisions of the documents, particularly payment in full of all monies owed X Corp. upon resolution of his client's personal injury claim for damages and receipt of claim proceeds.

You further indicate that liens in excess of a stipulated amount are further perfected by filing a financing statement. The Credit Application and Credit Agreement, both of which are also signed by the plaintiff prior to receiving funds from X Corp., direct the attorney to pay X Corp. in full upon resolution of the claim. The Security Agreement and Assignment further contains a provision that, in the event of any dispute between plaintiff and X Corp., plaintiff's attorney is to hold in escrow all funds due plaintiff, after satisfying statutory liens, pending resolution of the dispute.

Furthermore, you indicate that, although the plaintiff's attorney does not guarantee the repayment of the loan, nor does he make any representation that the settlement proceeds will be sufficient to repay the loan, X Corp. does rely on the plaintiff's authorization to his attorney to repay the loan, on the direction to hold disputed amounts in escrow, and on the attorney's acknowledgment of that authorization.

Finally, in our telephone conversation of October 19, 1992, you asked that the Committee assume that there is no dispute as to the ownership of the funds or that any such dispute has been or will be resolved presumably by judicial means. The Committee notes also that there is no indication that the cash advances received by plaintiff from X Corp. are to be used for expenses of litigation.

You have asked the Committee to opine whether, under the facts of the inquiry, if the client does not deny the debt to X Corp. but nevertheless directs the attorney, after the settlement proceeds are received, not to pay off X Corp.'s loan but to pay the proceeds directly to the client, it is improper for the attorney to comply with his client's direction, or must he honor the lien and the assignment of proceeds executed earlier by the client. Additionally, you have asked whether the response would differ if the client in good faith disputes the validity or amount of the debt to X Corp.

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The appropriate and controlling disciplinary rules relative to your inquiry are DR:9-102(B)(4), which states that a lawyer shall promptly pay or deliver to client or another as requested by such person the funds, securities, or other properties in possession of the lawyer which such person is entitled to receive; and DR:7-102(A)(7) which prohibits a lawyer from counseling or assisting his client in conduct that the lawyer knows to be illegal or fraudulent.

The Committee has previously opined that it is not improper for an attorney to persuade a finance company to agree to loan funds to the lawyer's personal injury clients who are unable to obtain bank loans, where the loan would become due upon resolution of the case either by settlement or trial and where the attorney would not guarantee, cosign, or be responsible for the loan, but would honor a lien on the case. LE Op. 1155. The Committee has also opined that, while it may not be improper per se for an attorney to enter into a contract with a health care provider for the purpose of authorizing the attorney to pay the provider's fee from the client's recovery, the more effective solution would be to have the client execute a release or consent form authorizing the attorney to pay or deliver the fees owed to the provider. LE Op. 1182. Furthermore, LE Op. 421, rendered on August 14, 1981, found that, where a personal injury client has authorized the attorney to pay a treating physician and hospital from settlement proceeds, it is not improper for the attorney to notify the physician and hospital of the receipt of such proceeds.

The Committee is of the opinion that, where the client directs the attorney, after settlement proceeds are received, not to pay off the loan but to pay the proceeds directly to the client, it would be improper for the attorney to unilaterally arbitrate such a money dispute between lender and borrower/personal injury client. In order to protect his client's interests, however, the Committee believes it is incumbent upon the attorney to counsel his client as to liabilities which may be incurred as a result of the client's failure to satisfy the Agreement. See Delaware Ethics Op. 1981-3 (April 21, 1981). Furthermore, although it is beyond the Committee's purview to opine as to contractual provisions such as the Security Agreement's requirement that all funds due plaintiff be held in escrow by the attorney, the Committee is of the opinion that it would not be improper for the attorney to disburse the undisputed portion of the proceeds to the borrower/personal injury client, while either holding in escrow any disputed sums, i.e., those owed to X Corp., or interpleading such sums to the appropriate court for determination of the entitlement as articulated in DR:9-102(B)(4).

It is the Committee's view that it is irrelevant to the propriety of the attorney's actions whether the client does not deny the debt or has a good faith dispute as to the validity or amount of the debt to X Corp.