

Committee Opinion
April 13, 2000

LEGAL ETHICS OPINION 1740

ATTORNEY POSTING REQUIRED BOND IN MATTER
INVOLVING APPEAL OF AWARD OF ATTORNEY'S
FEES

You have presented a hypothetical situation in which attorney's fees have been awarded in a civil action for an alleged violation of an injunction. The fees were applied against the client by the judge for an action by the client's attorney. The case has been appealed, and as a condition for staying the award of attorney's fees until the appeal is heard, the court requires a bond to be posted in the amount of the fees, which are de minimis, equaling approximately the amount of a monthly bill for the client.

Under the facts you have presented, you have asked the committee to opine as to whether guaranteeing the de minimis bond by the attorney is a violation of professional ethics when the client remains ultimately liable.

The applicable rules of professional conduct relative to your inquiry are:

Rule 1.8 Conflict of Interest: Prohibited Transactions

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

- (1) a lawyer may advance court costs and expenses of litigation, provided the client remains ultimately liable for such costs and expenses; and
- (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

The committee has previously opined that an attorney may advance or guarantee the expenses of litigation, provided that the client remains ultimately liable for such expenses. Legal Ethics Opinions 317, 1182. The committee also reviewed prior opinions holding that it is improper for an attorney or a bail bond company owned by the attorney to post a bail bond for a client who the attorney is defending in a criminal matter. Legal Ethics Opinions 1254, 1333. An attorney whose bail bond business bonds the same client who the attorney is defending in a criminal matter creates an impermissible adverse relationship with the client and the risk of shared confidences and secrets.

The committee believes that the circumstances you present are far different from an attorney acting as a professional bail bondsman for his own clients. The committee sees little difference between an attorney posting an appeal bond in this case and the advancement of any other litigation-related expense which is permitted under the cited rules and opinions. The client would remain ultimately responsible for reimbursing the attorney for the costs of the appeal bond. Therefore, the posting of the appeal bond by the attorney is an advancement of litigation-related expenses permitted under Rule 1.8 (e)(1).

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