

OPINION 465

October 1990

Tex. Comm. on Professional Ethics, Op. 465, V. 54 Tex. B.J. 76 (1991)

Canon .

QUESTION

1. May an attorney ethically own an interest in a lending institution which loans money to personal injury clients of the attorney?

2. May an attorney borrow money from a lending institution for case expenses (court costs, expenses of litigation or administrative proceedings, or reasonably necessary medical and living expenses) for a personal injury client, and ethically charge, or pass on, to the client, as a part of case expense, the out-of-pocket interest or finance charges of the lending institution?

OPINION

In both inquiries, we assume as fact:

(a) The attorney is engaged by the client on a contingent fee basis which fully complies with the mandates of Rule 1.04, and particularly Subsection (d) thereof, of the Texas Rules of Professional Conduct, and the Comments under such Rule;

(b) The attorney (and/or his firm) does not own or control the lending institution to the extent that the lending institution only makes loans to clients of the attorney, and no conflict of interest as prohibited by Rule 1.06 of the Texas Rules of Professional Conduct, or the Comments under such Rule, exists;

(c) The relationship between the attorney and the lending institution is not used to secure or continue the employment of the attorney by the client, or in any manner which violates the provisions of Rules 7.02 or 7.03 of the Texas Rules of Professional Conduct, or the Comments under such Rules;

(d) No communication or advertising of the attorney's services exist in violation of Rule 7.01 of the Texas Rules of Professional Conduct, or the Comments under such Rule;

(e) Any subject transaction with the client in which the attorney is involved, whether: [1] indirectly under Question I; or, [2] directly under Question II, is not done or accomplished in any manner which violates the Conflict of Interest concepts of, or constitutes a prohibited Transaction under, Rule 1.08 of the Texas Rules of Professional Conduct, and particularly Subsections (a), (d), (e), and (h) thereof, and the Comments under such Rule; and, further, that the requirements of such Rule are followed;

(f) The attorney does not conduct himself in any manner which violates Rule 8.04 of the Texas Rules of Professional Conduct, and particularly Subsections (a) (3) and (8) thereof, and the Comments under such Rule; and,

(g) The interest charges of the lending institution are fair, reasonable, customary and at a lawful rate.

It is noted that neither Question presented asks about the propriety of an attorney himself or herself charging the client interest on monies personally loaned to, or advanced for, the client by the attorney; consequently, that matter is not addressed by this opinion.

A reading of each and all of the above specifically referenced Rules of Professional Conduct, and the Comments thereunder, is necessary to a proper understanding of the following conclusions.

1. Under the specific facts assumed above, an attorney may properly own an interest in a lending institution which loans money to personal injury clients of the attorney;

2. Under the specific facts assumed above, an attorney may properly borrow money from a lending institution for case expenses for a personal injury client, and charge, or pass on, to the client the actual out-of-pocket interest or finance charges of the lending institution.