

Committee Opinion
January 31, 1989
Committee Op Note Update
November 18, 2021

LEGAL ETHICS OPINION 1182

ACQUIRING AN INTEREST IN
LITIGATION – DISCLOSURE:
ATTORNEY CONTRACTING WITH
HEALTH CARE PROVIDER.

You have asked for further clarification of LE Op. 449 as it relates to an attorney entering into a contract with a medical care provider for payment of the provider's fee from the client's recovery. During the course of your representation of an automobile accident victim, the healthcare provider requested that you sign and become a party to an agreement, a copy of which is enclosed, which would require the payment of the provider's fee for (1) medical services rendered and (2) for his time as an expert witness. You are concerned with the creation of a contractual liability on the part of an attorney and its effect on the attorney/client relationship. You allege further that after signing the agreement in question and at the time of disbursement of the recovery, the client may indicate that he has a dispute with the healthcare provider's bill and instruct his attorney not to pay the disputed amount. In that instance, an attorney may violate a number of ethical canons if he refuses to adhere to his client's wishes; however, refusal to pay the healthcare provider would result in contractual liability of the attorney personally.

You wish to know whether full disclosure to the client of the requirement that you pay the entire fee requested by the healthcare provider, whether disputed or not, is sufficient to alleviate you from further exposure from an ethical standpoint.

The Committee believes the appropriate and controlling rule is DR:5-103(B) which provides that an attorney may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and cost of obtaining and presenting evidence in connection with contemplated or pending litigation, provided that the client remains ultimately liable for such expenses. With regard to compensation of a witness, a lawyer may advance, guarantee, or acquiesce in the payment of expenses reasonably incurred by the witness to provide testimony, loss of time in attending or testifying and the reasonable fees for the professional services of an expert witness. In no event shall a lawyer agree to pay a contingent fee to a witness. (See DR:7-108(C) and EC:7-25) The Committee has previously opined that advancements or guaranteeing of charges to a physician, or compensating a witness for reasonable fair value of the time expended in preparing for and rendering of testimony in litigation, is ethically permissible only if the client remains ultimately liable. (See LE Op. 587, LE Op. 582, LE Op. 485, and LE Op. 449)

The Committee further opines that while it may not be improper *per se* for an attorney to enter into a contract with a healthcare provider for the purpose of authorizing the attorney to pay the healthcare provider's fees from the client's recovery, an attorney should avoid any potential contractual liability with a third-party/expert which may later affect the attorney/client relationship. The Committee believes a more effective solution is to have the client execute a release or consent form authorizing the attorney to pay or

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deliver the fees owed to the healthcare provider/expert. Even where there is a disclaimer in the contract that the attorney is not personally guaranteeing payment of the provider's charges, an attorney should be mindful of his responsibilities to act in the best interest of the client.

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Legal Ethics Committee Notes. – Rule 1.8(e)(2) allows a lawyer to pay litigation costs and expenses on behalf of an indigent client. A 2019 amendment to Rule 1.8(e) allows repayment of costs and expenses to be contingent on the outcome of the matter.

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