

Opinion Number 558
May 2005

QUESTION PRESENTED

May a lawyer borrow money for case expenses from an independent lending company and agree to pay the lender a percentage of the lawyer's contingency fee?

STATEMENT OF FACTS

A lawyer proposes, with the client's informed consent, to borrow money from a lending company for case expenses (court costs, litigation and expert witness expenses, and reasonably necessary medical and living expenses). The lending company is owned by non-lawyers. In addition to interest on the loan, the lawyer proposes to pay the lender a percentage of the lawyer's contingency fee in the case. The contingency fee agreement between the lawyer and client complies with all applicable rules governing such agreements. The fee percentage paid the lawyer is not influenced by the financing arrangements secured by the lawyer. The lawyer will pay all amounts due to the lending company and the client's recovery will not be affected by the percentage of the contingency fee paid by the lawyer to the lender.

DISCUSSION

The proposed arrangement constitutes an agreement to share legal fees with a non-lawyer. [Rule 5.04\(a\) of the Texas Disciplinary Rules of Professional Conduct](#) specifically provides that, with limited exceptions, a lawyer may not agree to share legal fees with a non-lawyer:

"A lawyer or law firm shall not share or promise to share legal fees with a non-lawyer"

Comment 1 to [Rule 5.04](#) notes that the principal reasons for the limitations on fee sharing are to prevent solicitation by lay persons of clients for lawyers and to avoid encouraging or assisting non-lawyers in the practice of law. The exceptions to the general prohibition on fee sharing that are recognized in subparagraphs (1), (2) and (3) of [Rule 5.04\(a\)](#) (following the statement of the general rule quoted above) are not applicable to the facts considered in this Opinion. Accordingly, the proposed arrangement for the lawyer to pay the lender a portion of a contingency fee would violate [Rule 5.04\(a\)](#).

The conclusion reached in this Opinion is consistent with other Opinions of the Committee that have considered the scope of [Rule 5.04\(a\)](#). In Opinion 493 (February 1994), the Committee determined that a lawyer could not divide legal fees with non-lawyer professionals with whom the lawyer shared office space and expenses. In Opinion 510 (December 1994), the Committee determined that [Rule 5.04\(a\)](#) did not generally prohibit a lawyer from participating in a contingency fee agreement with a client who also signed a contingency fee contract with a non-lawyer investigator. In Opinion 552 (August 2004), the Committee determined that [Rule 5.04\(a\)](#) prohibits payment of a percentage of a legal fee to a third-party auditor.

CONCLUSION

It is a violation of [Rule 5.04\(a\) of the Texas Disciplinary Rules of Professional Conduct](#)

for a lawyer to agree to pay a percentage of the lawyer's contingency fee to a finance company or other lender in connection with obtaining a loan.