

ETHICS ADVISORY PANEL
OPINION #93-100 REQUEST #445
Issued December 8, 1993

The inquiring attorney asks whether Rule 1.8(e) of the Rules of Professional Conduct prohibits a lawyer from providing financial assistance to a client for purposes that are not related to the subject of representation. The inquiring attorney queries whether a loan agreement may be entered into between client and lawyer. The inquiring attorney suggests that the loan agreement and/or information regarding the agreement be forwarded to the Panel to ensure that abuses are not committed by lawyers under the guise of assisting clients who are in need of financial aid.

Rule 1.8(e) provides as follows:

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, the repayment of which may be contingent on the the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

Professor Hazard notes that:

Rule 1.8(e) by its terms applies only to costs associated with "litigation." It should not be impermissible, therefore, for a lawyer to lend a client funds to close a deal that the lawyer negotiated. However, the terms of such a loan must be fair, and the written disclosure and consent procedures of Rule 1.8(a) must be followed. Hazard, The Law of Lawyering, §1.8: 200 et seq (1992).

Rule 1.8 provides in part as follows:

Rule 1.8 Conflict of Interest" Prohibited Transactions.

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other

pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

The requirements governing business transactions between client and lawyer are stringent. The client must be given the opportunity to seek the advice of independent counsel and must be counseled as in other conflict situations. The client must consent to the terms in writing.

The Panel concludes that Rule 1.8 does not outright prohibit a lawyer from loaning a client funds for purposes unrelated to the representation. However, any such loan must conform with the requirements of Rule 1.8(a).

The Panel will not undertake a review of the loan agreements as the inquiring attorney suggests.