

ETHICS ADVISORY PANEL
OPINION # 95-2, Request # 559
Issued February 9, 1995

The inquiring attorney represented a client in a domestic relations matter. The client paid a retainer and was later billed for an amount in excess of the retainer. The client terminated the inquiring attorney's legal services because he/she was upset with the amount due in legal fees.

In order to ensure payment of this bill, the inquiring attorney proposes to file an attorney's lien on property that was a part of the divorce and settlement agreements. The attorney cites R.I.G.L. 9-3-1 which states "the attorney shall have a lien to the value of his contractual interests in the cause of action, claim, demand, counterclaim or other matter concerning which the contract is entered to." The inquiring attorney asks if the filing of an attorney's lien would violate the Rules of Professional Conduct.

Rule 1.8 entitled "Conflict of Interest: Prohibited Transactions" paragraph (j) sets forth the general rule that attorneys are prohibited from acquiring a proprietary interest in litigation. This general rule is subject to specific exceptions:

(j) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

- (1) acquire a lien granted by law to secure the lawyer's fee or expenses; and
- (2) contract with a client for a reasonable contingency fee in a civil case.

In Ethics Advisory Opinion # 91-49 (Issued August 16, 1991) an attorney asked whether the attorney handling a domestic relations matter could secure an attorney's lien by recording the lien in the land evidence records where the marital domicile is located. This opinion stated that "It appears to the Panel that the proposed action falls outside the scope of the statutory procedures and as such would amount to improper conduct."

Rule 7.2(c) is also pertinent to this discussion. That Rule generally prohibits an attorney from giving anything of value to a person for recommending the lawyer's services. One exception is that an attorney may "pay the usual charges of a not-for-profit lawyer referral service or legal service organization." The "usual charges" includes flat enrollment charges as well as percentage fees. The percentage fee is a well established method of funding lawyer referral services. See, ABA/BNA Lawyer's Manual on Professional Conduct 41:804.

The usual charge of the percentage fee should be reasonable and should not affect the quality of legal services performed by the attorney. The referral fee should not be so great as to infringe upon the lawyer's initiative and enthusiasm regarding the results achieved.

A lawyer referral service is charged with making legal services readily available to the public. It would be inappropriate to use the fees for the general operating expenses of the Bar Association. Such funds should be used in furtherance of the goal of making legal services so available.