# Rhode Island Supreme Court Ethics Advisory Panel Op. 2023-2 Issued May 16, 2023

### **FACTS**

The inquiring attorney represents a client in a general civil litigation matter. The client agreed to pay attorney's fees at the close of his/her case. The client now does not have the financial means to pay the attorney's fees. Instead, the client has agreed that the inquiring attorney's law firm can place a lien on his/her property for the amount owed.

#### **ISSUE PRESENTED**

The inquiring attorney asks whether it is permissible for his/her law firm to place a lien on the client's property.

## **OPINION**

It is allowable for the inquiring attorney's law firm to place a lien on the client's property for the amount of attorney's fees owed. In acquiring this interest, the law firm must comply with the requirements of Rule 1.8(a).

#### **REASONING**

The Rules of Professional Conduct permit lawyers to accept non-monetary property as payment for legal services. Comment [4] to Rule 1.5, which governs fees, states:

... A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8 (i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

This Panel has previously read this provision to allow for an attorney to acquire a note and mortgage, as a contingent fee, on the property of his/her client that was the subject of an adverse possession claim. See Ethics Advisory Panel Op. 12-05 (2012). See also ABA Formal Ethics Op. 02-427 (2002) ("A lawyer may acquire a security interest in client's property to secure a fee."); New York City Bar Association's Comm. on Professional Ethics Op. 1988-7 (1988) (holding that a lawyer may secure payment of attorney's fees by obtaining a mortgage in his client's property provided the transaction is fair to the client and client consent is obtained).

The inquiring attorney, in a similar manner to the matter previously before the Panel, proposes acquiring a lien on his/her client's property in lieu of the originally agreed upon monetary payment. It is the Panel's opinion that this is permissible.

As the inquiring attorney seeks to obtain a security interest adverse to his/her client, the requirements of Rule 1.8(a) must be met. See Rule 1.8, Comment [1]. This is because arrangements for fees to be paid in non-monetary property have the essential qualities of a business transaction with a client. See Rule 1.5, Comment [4]; see also ABA Model Rules of Professional Conduct, Rule 1.8, Comment [19] ("When a lawyer acquires by contract a security interest in property other than that recovered through the lawyer's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of paragraph (a).")

Rule 1.8 of the Rules of Professional Conduct entitled "Conflict of Interest: Current Clients: Specific Rules" states in pertinent part:

- (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 in a manner that can be reasonably understood by the client;
- (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
- (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

As the Panel has explained, "a lawyer taking a security interest in a client's property must comply with the requirements of Rule 1.8(a) concerning disclosure, fairness, client consent, and the client's opportunity to seek independent counsel." <u>See</u> Ethics Advisory Panel Op. 12-05 (2012). It is the Panel's opinion that the inquiring attorney and his/her law firm must do the same.