L.A. COUNTY BAR ASSOCIATION
PROFESSIONAL RESPONSIBILITY AND ETHICS COMMITTEE

FORMAL ETHICS OPINION NO. 500
May 10, 1999

FINANCING LEGAL EXPENSES OF ANOTHER'S LAWSUIT

SUMMARY

A member of the State Bar of California may establish a business to finance the legal expenses of another person's lawsuit in exchange for an assignment of an interest in the proceeds of the claim and a recovery of the expenses although the member had no interest in the claim prior to the assignment where (1) the assignor is represented in the lawsuit by an independent attorney of the assignor's choice, (2) the assignor brings the lawsuit in his or her own name, (3) the member does not control or interfere with the assignor's attorney, and (4) if the suit is successful, the member recovers the legal expenses she paid and a percentage of the total recovery. The attorney representing the assignor in the lawsuit may not accept compensation from a non-client unless he or she complies with Rule of Professional Conduct 3-310(F) and Business and Professions Code § 6068(e), which require members of the bar to exercise independent professional judgment free of interference and to preserve their clients' confidential information. If the person financing the lawsuit compromises the attorney's independence and duty of confidentiality, the proposed relationship would not comply with the Rules.

AUTHORITIES CITED

Cases:

De Los Santos v. Superior Court (1980) 27 Cal.3d 677, 166 Cal. Rptr. 172, 613 P.2d 633
Estate of Cohen (1944) 66 Cal.App.2d 450, 152 P.2d 485
Fireman's Fund Ins. Co. v. McDonald, Hecht & Solberg (1994) 30 Cal.App.4th 1373
Hoiles v. Superior Court (1984) 157 Cal.App.3d 1192, 204 Cal.Rptr. 111
Howard v. Superior Court (1975) 52 Cal.App.3d 722, 125 Cal.Rptr. 255
In re Cummins Estate (1904) 143 Cal. 525, 77 P. 479
Intex Plastics Sales Co. v. Hall, C-85-2987 JPV (N.D. Cal.)
Killian v. Millard (1991) 228 Cal.App.3d 1601, 279 Cal.Rptr. 877
Martin v. Freemen (1963) 216 Cal.App.2d 639, 31 Cal.Rptr. 217
Mathewson v. Fitch (1863) 22 Cal. 86
Saladini v. Righellis, 426 Mass. 231, 687 N.E.2d 1224, 1997 WL 751609 (Mass. 1997)
Sheldon Appel Co. v. Albert & Oliker (1989) 47 Cal.3d 863, 254 Cal.Rptr. 336

Statutes:;

Business and Professions Code § 6068(e)
Business and Professions Code § 6129
Business and Professions Code § 6146
Business and Professions Code §§ 6147, 6147.5
Civil Code §§ 953, 954

Code Civ. Proc. § 128.5
Code Civ. Proc. § 128.7
Code Civ. Proc. § 2018
Evid. C. §§ 952, 953
Penal C. §§ 158 & 159

Other:

L.A. Bar Assn. Form. Op. 435 (1985)
Martin, "Syndicated Lawsuits: Illegal Champerty or New Business Opportunity?" Am. Bus. L. J., Vol. 30, No. 3 (November 1992)
Radin, "Maintenance by Champerty," 24 Cal. L. Rev. 48 (1935)
Rule of Professional Conduct 1-100(B)(2)
Rule of Professional Conduct 1-600(A)
Rule of Professional Conduct 3-310(F)
Rule of Professional Conduct 3-700(C)(1)(e)& (f)
Rule of Professional Conduct 4-200
Rule of Professional Conduct 4-210
1 Witkin, Summary of Calif. Law, Contracts § 921

FACTS AND ISSUES PRESENTED

The Inquirer is an attorney licensed to practice in California. The attorney proposes to establish a business that would finance the expenses of business and real estate litigation, including attorneys' fees and costs, by individuals ("Claimants") who otherwise would not pursue their legal claims due to a lack of financial resources or because they are unable or unwilling to have a lawyer handle their claims on a contingent fee basis. In return, the Inquirer's company would recover its investment of attorneys' fees and costs paid to the Claimant's attorney, and would also be assigned a percentage from any recovery.

No attorney-client relationship would exist between the Inquirer and the Claimants, who would retain their own attorneys, but the Inquirer proposes to monitor the cases closely by reviewing pleadings and correspondence, attending hearings, and discussing the cases with the attorneys. The Inquirer would charge no legal fees for time spent in this monitoring function and would not share in the legal fees earned by the attorneys for the Claimants. The Inquirer would reserve the right to terminate the financing arrangement with a Claimant if the Inquirer and the Claimant disagree on the manner in which the Claimant's attorney is pursuing the case.

The issue presented to the Committee is whether such an arrangement for financing another person's litigation expenses in exchange for an interest in the suit, and in which the person financing the lawsuit could terminate the arrangement if there is disagreement over the lawyer's performance, is proscribed by any rule of professional conduct or governing ethical principles.

DISCUSSION

A. The Proposal Is Not Prohibited by the Doctrines of Champerty and Maintenance.

In order to evaluate whether a member of the Bar would act ethically in the proposed situation, it is necessary to consider the legal doctrine of champerty. At common law, speculation in litigation by paying the costs of another person's lawsuit in exchange for a share of the proceeds was a crime known as maintenance by champerty, and its suppression was deemed to be a matter of public welfare. Radin, "Maintenance by Champerty," 24 Cal. L. Rev. 48, 67 (1935). The doctrine was viewed as a check on frivolous or unnecessary litigation, and was also thought necessary to prevent financial overreaching by persons of superior bargaining position. However, champerty became obsolete as a crime in England, and American courts concluded that maintenance (which was held to include champerty) had no real foundation in the United States. In Mathewson v. Fitch (1863) 22 Cal. 86, the defendant had agreed to pay his attorneys if they successfully prosecuted his appeal. After they prevailed, he refused to pay on the ground that the contract was void for maintenance. The California Supreme Court rejected the defense:

Nor is the contract void as being contrary to the policy of any law of this State in regard to maintenance. That offense was created by statute in England in early times, in order to prevent great and powerful persons from enlisting in behalf of one party in a lawsuit, by which the opposite and feeble party would be oppressed and prevented from obtaining justice.

. . . It has been said in America that the law against maintenance was peculiar to early English society, and inapplicable to American society, and, therefore, that it would not exist here unless by statute enacted here.

. . . There is no statute upon the subject in this State, and we have no doubt that the Legislature of 1850, when it adopted the statutes which were deemed necessary to organize the legal system of the State, by omitting to enact any such statute, acted in the spirit of the decisions which hold such laws inapplicable to this country, and with the direct purpose that there should be no law relating to the subject. In our judgment, in the absence of such a statute, the offense of maintenance is unknown to the laws of the State.

Id. at 94-95. This holding has been reiterated in numerous decisions. Thus, for example, in Estate of Cohen (1944) 66 Cal.App.2d 450, 458, 152 P.2d 485, the First District Court of Appeal approved an heir's assignment of a portion of her interest in the estate to a non-lawyer in consideration for his "time, effort, and expense" in investigating her claim. The agreement was challenged as champertous, but the appellate court affirmed that the doctrine of champerty has no application in California jurisprudence. Id .

The assignment of a chose in action, although champertous, is expressly authorized by the Civil Code, which eliminated common law prohibitions on such assignments. 1 Witkin, Summary of Cal. Law, Contracts § 921. A chose in action, consisting of a right to recover money or other personal property that arises out of the violation of a right of property or an obligation, may be transferred by its owner. Civ. C. §§ 953, 954.[1]

Similarly, a lawyer who prosecutes a client's lawsuit in return for a contingent fee does not violate public policy although he or she is financing the suit in return for an interest in its proceeds. Although contingency fees were clearly maintenance by champerty, the ethical objections to the practice were overcome. As Radin observed:

The objections raised against [the contingent fee] have been based in part on what is properly enough called legal ethics. But it forms the lower grade of ethics, what may be said to be Grade B ethics, the etiquette of the profession rather than its moral obligation. The contingent fee, it was said, lowered the dignity of the Bar. The transaction savored of merchandising, because it reeked of speculation. . . .

. . . In the United States, doubts were felt early enough about the unqualified validity of the objection. It seemed hard that a claimant who had no money or marketable property but a chose in action which might be valuable - indeed, extremely valuable - should be unable to secure his right.

. . . Contingent fees . . . became fairly common, and could not be summarily brushed aside, champertous though they were. Since etiquette, legal or other, depends more than anything else on actual practices, professional rules had necessarily to be modified in order to include what was becoming an unmistakably common practice.

In California, contingent fee arrangements are permitted and regulated by Sections 6146, 6147 and 6147.5 of the Business and Professions Code.

Until May 27, 1989, the Rules of Professional Conduct prohibited an attorney from agreeing to pay the costs of litigation. Current Rule 4-210(A)(3) provides:
(A) A member shall not directly or indirectly pay or agree to pay, guarantee, represent, or sanction a representation that the member or member's firm will pay the personal or business expenses of a prospective or existing client, except that this rule shall not prohibit a member:

* * *

(3) From advancing the costs of prosecuting or defending a claim or action or otherwise protecting or promoting the client's interests, the repayment of which may be contingent on the outcome of the matter . . . .

To guard against the perceived evils once addressed by the common law doctrines of maintenance and champerty, California has erected other protections. Common law barratry - the practice of exciting groundless judicial proceedings with a corrupt or malicious intent to vex and annoy - remains a misdemeanor under Penal C. §§ 158 & 159. See Howard v. Superior Court (1975) 52 Cal.App.3d 722, 727, 125 Cal.Rptr. 255. Frivolous suits are discouraged by the availability of sanctions under Code Civ. Proc. §§ 128.5 and 128.7 and malicious prosecution actions. Sheldon Appel Co. v. Albert & Oliker (1989) 47 Cal. 3d 863, 254 Cal.Rptr. 336, 765 P.2d 498. Overreaching by attorneys in a superior bargaining position to clients is regulated by statutory limitations on contingency fees, Business and Professions Code § 6146, and by Rule of Professional Conduct 4-200 which prohibits unconscionable fees.

B. The Proposal Does Not Violate Business and Professions Code Section 6129.

The last vestige of the historical disapproval of champerty can be found in Business and Professions Code § 6129, which states in pertinent part:

"BUYING CLAIM AS MISDEMEANOR. Every attorney who, either directly or indirectly, buys or is interested in buying any evidence of debt or thing in action, with intent to bring suit thereon, is guilty of a misdemeanor."

Section 6129 derives from former Penal Code § 161 and was considered to express public policy to prevent obstruction of justice and corruption by attorneys. Davis v. Superior Court (Marin Co.) (1959) 175 Cal.App.2d 8, 16, 342 P.2d 513. The statute has been considered in just a handful of cases, and in those cases, the courts have narrowly construed its application. For example, a contingent fee in consideration for the services of the lawyer did not violate the statute (In re Cummins Estate (1904) 143 Cal. 525, 77 P.479), nor did a transfer of a claim to an attorney in consideration for an antecedent debt. Martin v. Freemen (1963) 216 Cal.App.2d 639, 31 Cal. Rptr. 217. In Martin, the First District Court of Appeal observed:

"California has never adopted the common law doctrines of champerty and maintenance . . . . We do have, however, certain statutes of precise and limited content which proscribe a very few of the many activities which two centuries and more ago were considered champertous. One of these is Section 6129 . . . .

The purpose of the statute, as is that of champerty laws in general, is to prevent the officious fomenting of litigation. The outright purchasing by attorneys of claims which perhaps otherwise would never be sued upon obviously would tend to stir up a good deal of litigation if it were permitted; but the transfer by one who owes money to an attorney of a claim which the transferor possesses against a third person may have but insignificant effect in the volume of litigation, and it partakes much less of the officious intermeddling of out-and-out purchase and sale . . . ."

Id. at 642-643 (citations omitted).

In Caras v. Parker (1957) 149 Cal.App.2d 621, 309 P.2d 104, the Court of Appeal held that Section 6129 was not violated where an attorney had a 50% interest in the property which his client was claiming in a specific performance action if (1) the attorney was not a party to the contract being sued upon; (2) the attorney was not a party to the lawsuit, and (3) the attorney had not solicited the client's business to sue on the contract. In Crocker Citizens National Bank v. Knave (1967) 251 Cal.App.2d 875, 833, 60 Cal. Rptr. 66, the Court of Appeal affirmed that Section 6129 is not violated by an attorney's purchase of a judgment or debt unless the attorney also intended to or did bring suit upon the judgment.

In Cord v. Smith, 370 F.2d 418, 424 (9th Cir. 1966), the Court of Appeals, applying California professional standards, suggested that an attorney who was disqualified from representing either of the parties to litigation because of a violation of the predecessor to Rule 3-310(E) [regulating employment adverse to a client or former client] could not become a party to a lawsuit by reason of one party's assignment, in part because of the prohibition of Section 6129. At least one California Court of Appeal has refused to address whether it was proper for an attorney to obtain an assignment of a client's interest in a suit and bring suit thereon as an addition to the attorney's own personal claims. County of Butte v. Bach (1985) 172 Cal.App.3d 848, 867, fn.9, 218 Cal. Rptr. 613.

In Cohn v. Thompson (1932) 128 Cal.App.Supp. 783, 789, 16 P.2d 364, the Appellate Department of the Los Angeles County Superior Court held that a collection agent who took an assignment of a claim and brought suit thereon in his own name did not violate the predecessor of Section 6129.

Consistent with the foregoing cases, the proposed conduct in this Inquiry would not violate Section 6129 in the following circumstances: (1) where an attorney does not buy a debt or chose in action, but rather obtains an assignment of an interest in the proceeds of a claim; (2) where the attorney does not obtain the assignment with the intent to bring suit thereon, either as a party to the lawsuit or as the attorney to the party, and (3) where the assignor brings the actions in his or her own name and is represented in the action by an independent attorney.

C. The Inquirer's Proposal Is Analogous to the Syndication of Lawsuits Which Has Met with Limited Acceptance by Courts.

The Inquirer's proposal for financing lawsuits in exchange for the assignment of an interest in the Claimants' proceeds is analogous to the syndication of legal claims. The syndication of lawsuits arose for the same reason that contingent fee arrangements exist: plaintiffs could not pursue claims for lack of sufficient financial resources. Martin, "Syndicated Lawsuits: Illegal Champerty or New Business Opportunity?" Am. Bus. L. J. Vol. 30, No. 3 (November 1992). When attorneys were unwilling or unable to finance the lawsuit, enterprising clients have sold shares in their claims to investors.

In Saladini v. Righellis, 426 Mass. 231, 687 N.E.2d 1224, 1997 WL 751609 (Mass. 1997), the parties had entered into a written agreement under which Saladini advanced funds to allow Righellis to pursue her legal claims arising out of certain real estate. Righellis agreed to reimburse Saladini if the suit were successful, and to pay her 50% of any net recovery. Saladini had no interest in the underlying real estate and was not a lawyer. When Righellis refused to pay, Saladini sued, and the trial court ruled that the agreement was champertous and against public policy. The Supreme Judicial Court of Massachusetts reversed. It held that champerty was no longer recognized in Massachusetts:

We have long abandoned the view that litigation is suspect, and have recognised that agreements to purchase an interest in an action may actually foster resolution of a dispute . . . .

We also no longer are persuaded that the champerty doctrine is needed to protect against the evils once feared: speculation in lawsuits, the bringing of frivolous lawsuits, or financial overreaching by a party of superior bargaining position.

Id. at 234-235. Instead, the court stated, judges could exercise their inherent power to scrutinize an agreement to finance a lawsuit. They should consider whether the fees charged are excessive or whether any recovery is vitiated because of impermissible overreaching by the financier. Id. at 235-236. The court stated that an additional relevant factor might include whether Righellis may have been unable to pursue the lawsuit at all without Saladini's funds, and observed that Saladini should not be denied her recovery if that would result in a windfall to Righellis. The court cautioned that its ruling should not be interpreted as authorizing the syndication of lawsuits, but did not discuss why there was any difference between a single investor or many investors. Id. at 236 n 7.

Although maintenance and champerty were never adopted in California, the syndication of lawsuits remains an open question in California. In Killian v. Millard (1991) 228 Cal.App.3d 1601, 279 Cal.Rptr. 877, a venture capital firm holding a note allegedly worth 20% of the ComputerLand company sold the note to two individuals who sued to enforce it. Unable to personally finance the lawsuit, the plaintiffs in turn syndicated it by selling 50 units at $10,000 per unit to investors, in return for the right to a percentage share in the net proceeds of the suit. On the defendant's motion, the Superior Court of Alameda County found that the syndication violated public policy by discouraging settlement, fomenting litigation, and interfering with the orderly process of the courts and litigation, and ordered the syndicators to return the money to their investors. Id. at 1604. Noted one commentator: "Clearly the California trial court inveighed by rote against a champertous agreement. There was no explanation of how the plaintiffs' syndication interfered with orderly court process." Martin, "Syndicated Lawsuits," supra .

The First District Court of Appeal reversed on the sole ground that the defendant lacked standing to object to the syndication agreement between the plaintiffs and their investors. Id. at 1605. It did not reverse the lower court's finding that the syndication violated public policy, and added in dictum that the trial court had the power to ensure that the prosecution of the action was not "tainted by outside pressures." If the investors' payment of the lawyers' fees created a duty that conflicted with the lawyers' duties to their clients, the court could order the lawyers to refund the money or be disqualified. Id. at 1606. The Court of Appeal further noted that the trial court could dismiss the action as frivolous or on the grounds of "nonjusticiability" if it determined the case was brought not because of its merits, but purely as an investment. Id. [2]

D. The Attorney Who Accepts Representation of the Claimant Subject to the Agreement Between the Claimant and the Inquirer Must Ensure That Confidentiality Is Not Breached And Independence of Professional Judgment Is Not Impaired.

As discussed above, within certain parameters, the Inquirer may finance a lawsuit in return for a partial assignment of the Claimant's interests. However, as a member of the State Bar of California, the lawyer proposing to represent the Claimant subject to the agreement must comply with a number of professional standards.

1. Maintaining independence of professional judgment.

Rule 1-600(A) provides: [3]

A member shall not participate in a nongovernmental program, activity or organization furnishing, recommending, or paying for legal services, which allows any third person or organization to interfere with the member's independence of professional judgment, or with the client-lawyer relationship, or allows unlicensed persons to practice law, or allows any third person or organization to receive directly or indirectly any part of the consideration paid to the member except as permitted by these rules, or otherwise violates the State Bar Act or these rules.

Since the Inquiry proposes that the Inquirer's company would provide the funding for the lawsuit, the provisions of Rule 1-600(A) regulating a nongovernmental organization paying for legal services may well apply. The attorney for the Claimant, therefore, must ensure that the Inquirer does not interfere with the attorney's exercise of independent professional judgment or with the attorney-client relationship. For example, the attorney may believe, contrary to the Inquirer, that a certain tactic in the lawsuit is in the best interest of the client. If the attorney proceeds with such action in the best interest of the client, further funding of the lawsuit may become unavailable, thus endangering the ability of the client to proceed with the lawsuit. Consequently, the attorney's course of action may in one respect be in the best interest of the client but in another respect may not be in the client's best interest. Unless the agreements between the Inquirer and Claimant and between the Claimant and his attorney clearly address these issues, they could drive a wedge in the attorney-client relationship and interfere with the exercise of the best judgment of the attorney, who may fear losing funding for the lawsuit, including payment of the legal fees. [4]

Rule 3-310(F) provides:

(F) A member shall not accept compensation for representing a client from one other than the client unless:

(1) There is no interference with the member's independence of professional judgment or with the client-lawyer relationship; and

(2) Information relating to representation of the client is protected as required by Business and Professions Code section 6068, subdivision (e); and

(3) The member obtains the client's informed written consent, provided that no disclosure or consent is required if:

(a) such nondisclosure is otherwise authorized by law; or

(b) the member is rendering legal services on behalf of any public agency which provides legal services to other public agencies or the public.

If the agreement between the Inquirer and the Claimant provides that the Claimant's attorney will receive compensation directly from the Inquirer, the attorney must comply with Rule 3-310(F). The issues respecting interference with either the independent exercise of professional judgment or the attorney-client relationship are the same as with Rule 1-600.

Rule 3-310(F) is silent respecting compliance where the funds to pay the lawyer are received first by the Claimant who then pays the lawyer. If the agreement between Inquirer and Claimant provides that the Claimant will pay for the legal services from a fund of money, it is outside the scope of Rule 3-310(F), but the lawyer must still meet the duties to exercise his or her independent professional judgment and to preserve the confidences of his or her own client under Rule 1-600(A) and Business and Professions Code § 6068(e), respectively.

2. Maintaining confidentiality.

There are three basic standards regarding the confidentiality of information acquired by an attorney during the representation of a client.

Business and Professions Code § 6068 states:

It is the duty of an attorney to do all of the following:

. . . (e) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets of his or her client.

Evidence Code §§ 950 et seq. require the attorney to assert the attorney-client privilege if disclosure is requested. Pursuant to Evidence Code § 953, the client is the holder of the privilege and may waive the privilege. Pursuant to Code Civ. Proc. § 2018, the attorney is the exclusive holder of the right to refuse to disclose attorney work product to persons other than the client.

The Inquirer proposes to monitor closely the lawsuits in which the Inquirer's company has invested by discussing the case with the Claimant's attorney. Thus, two issues arise regarding confidentiality: (1) whether the Claimant and his lawyer can agree to disclose confidential information concerning the case with the Inquirer for monitoring purposes; and (2) whether the disclosure of confidential information to the Inquirer can result in compelling the Inquirer to testify about confidential information that would otherwise be privileged from disclosure.

Evidence Code § 952 provides that communications are confidential even if disclosed to third parties if the third party is present to further the interest of the client in the consultation or if disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted. Under Section 952, a third party to whom communication is reasonably necessary to accomplish the purpose for which the lawyer was consulted cannot be compelled to testify about confidential information she has learned. De Los Santos v. Superior Court (1980) 27 Cal.3d 677, 683, 166 Cal. Rptr. 172, 176, 613 P.2d 633. There is no requirement in the statute that the third party who communicates with the lawyer must be wholly disinterested in the action. Id. at 685, 166 Cal.Rptr. at 177. Accord, Hoiles v. Superior Court (1984) 157 Cal.App.3d 1192, 1200, 204 Cal.Rptr. 111, 116 ("privilege extends to . . . business associates . . . when disclosure . . . is reasonably necessary to further the interest of the litigant.") The Claimant may reasonably believe that disclosure of the confidential information to the Inquirer is essential for the accomplishment of the purpose of the legal representation because without the disclosure of information to support continued funding, no lawsuit or representation would be possible. Any agreement between the Inquirer and the Claimant should include language to clarify the essential nature of the disclosure to the Inquirer, so as to maintain the privilege under Section 952. It should state that the attorney shall be directed to make reports to the Inquirer to further the interest of the Claimant. The Inquirer should sign a confidentiality agreement that requires the Inquirer to maintain the confidentiality of all information disclosed.

This opinion is advisory only. The Committee acts on specific questions and its opinions are based on such facts as are set forth in the inquiry submitted to it.

---

[1] Under California law, the assignability of things in action is the rule, nonassignability the exception. Generally, only causes of action for personal injuries arising out of a tort, including wrongs to the person, reputation, or feelings of the injured party, are not assignable. Fireman's Fund Ins. Co. v. McDonald, Hecht & Solberg (1994) 30 Cal.App.4th 1373. The Inquirer does not propose to finance the litigation of such personal torts.

[2] In an unpublished decision described in Martin, "Syndicated Lawsuits," supra , the United States District Court for the Northern District of California dismissed a counterclaim in a patent infringement lawsuit on the ground that it had been syndicated in violation of public policy and the doctrine of champerty. After the

inventor assigned an interest in the patent to a limited partnership, changing the arrangement from one in which he granted rights in the proceeds to one in which he assigned rights in the chose in action arising from infringement of the patent, the Court reinstated his counterclaim and joined the limited partnership as another counterclaimant. Intex Plastics Sales Co. v. Hall, C-85-2987 JPV (N.D. Cal. 1990).

[3] For purposes of the California Rules of Professional Conduct, Rule 1-100(B)(2) defines "member" to mean a member of the State Bar of California.

[4] The possibility that the Inquirer could revoke the financing does not automatically mean that the attorney's independent judgment would be impaired. The Inquirer could withdraw financing for reasons unrelated to any dissatisfaction with the attorney's performance, for example, because the Inquirer no longer believes in the merits of the case or because the value of the case is outweighed by its expense. Even if the financing is withdrawn, other options would still exist for continuing the suit, including a contingent fee arrangement. Furthermore, the pressure that allegedly would be brought to bear on the attorney's independent judgment is not unique to the proposed financing arrangement because in every engagement, the possibility exists that the attorney may not be paid, or even fired, if he does not please the party who contracted to pay his fees. Of course, under Rule 3-700(C)(1)(e) and (f), the attorney is permitted ethically to withdraw from a representation if a client insists that he "engage in conduct that is contrary to the judgment and advice of the member" or if the client breaches an agreement or obligation to pay his fees and expenses.