

**LOS ANGELES COUNTY BAR ASSOCIATION
PROFESSIONAL RESPONSIBILITY AND ETHICS COMMITTEE**

OPINION NO. 532
December 11, 2019

LAWYER AGREEING TO INDEMNIFY OPPOSING PARTY AS A CONDITION OF
SETTLEMENT

SUMMARY

1. Plaintiff's counsel in a personal injury action may not enter into an agreement to defend and indemnify defendants, defense counsel or their liability insurers against an action brought against them by third parties, such as Medicare or health insurers, to recover a debt plaintiff might owe the third parties. First, such an agreement is prohibited as an improper payment of the client's personal and business expenses under rule 1.8.5(a).¹ Second, such an agreement would create a conflict of interest between the lawyer and the client by compromising the lawyer's exercise of independent professional judgment and, even if the lawyer nevertheless could continue the representation under rule 1.7(b), the lawyer would remain barred from agreeing to indemnify by rule 1.8.5(a). Third, rule 1.16(a)(2) would require the lawyer to withdraw if the client were to demand that the lawyer provide the indemnification.

2. Because plaintiff's counsel's agreement to such an arrangement would violate the rules of professional conduct, defendant's counsel's demand that plaintiff's counsel agree to indemnify defendants and their agents would violate rule 8.4(a), which prohibits a lawyer from soliciting or inducing a violation of the Rules of Professional Conduct or the State Bar Act.

AUTHORITIES CITED

California Rules of Professional Conduct

Rule 1.0
Rule 1.0.1(e), (e-1)

¹ Unless otherwise indicated, all references to a "Rule" or "rule" are to the California Rules of Professional Conduct.

Rule 1.2
Rule 1.4.1
Rule 1.7
Rule 1.8.5
Rule 1.15
Rule 1.16
Rule 2.1
Rule 8.4

California Rules of Court:

Rule 3.1130

Statutes and Regulations:

42 U.S.C. § 1395y
42 C.F.R. § 411.24

Cases:

Beck v. Wecht (2002) 28 Cal.4th 289 [121 Cal.Rptr.2d 384]
Blanton v. Womancare Inc. (1985) 38 Cal.3d 396 [212 Cal.Rptr. 151]
Gafcon, Inc. v. Ponsor & Associates (2002) 98 Cal.App.4th 1388 [120 Cal.Rptr.2d 392]
Saunders v. Weissburg & Aronson (1999) 74 Cal.App.4th 869 [87 Cal.Rptr.2d 405]
United States v. Harris (N.D. W.Va. March 26, 2009) 2009 WL 891931

Ethics Opinions – California

State Bar Formal Opn. 1981-55
State Bar Formal Opn. 1988-101
L.A. County Bar Formal Opn. 517 (2006)

Ethics Opinions – Other Jurisdictions²

Alabama State Bar Ethics Opn. RO 2011-01
Alaska Bar Association Ethics Opn. 2014-4
Arizona State Bar Ethics Opn. 03-05
Delaware State Bar Association Committee on Professional Ethics Opn. 2011-1

² Comment [4] to rule 1.0 of the California Rules of Professional Conduct provides in relevant part: "[O]pinions of ethics committees in California, although not binding, should be consulted by members for guidance on proper professional conduct. Ethics opinions and rules and standards promulgated by other jurisdictions and bar associations may also be considered."

Florida Bar Staff Opn. 30310 (2011)
Georgia State Bar Formal Advisory Opn. 13-2
Illinois State Bar Association Advisory Opn. 06-01
Indiana State Bar Association Legal Ethics Opn. 2005-1
Maine Ethics Opn. 204 (2011)
Missouri Formal Advisory Opn. 125 (2008)
Montana State Bar Opn. 131224 (2013)
Supreme Court of Ohio Ethics Opn. 2011-1
Oklahoma State Bar Association Ethics Opn. No. 328 (2011)
Oregon State Bar Formal Opn. 2015-190
South Carolina Ethics Advisory Opn. 08-07
Tennessee State Bar Formal Ethics Opn. No. 2010-F-154
Utah Ethics Advisory Opn. 11-01
Vermont Bar Formal Ethics Opn. 2013-1
Virginia Legal Ethics Opn. 1858 (2011)
Washington State Bar Association Advisory Opn. 1736 (1997)
Wisconsin Formal Opn. E-87-11 (1987)
New York City Bar Association Formal Opn. 2010-3
Philadelphia Bar Association Professional Guidance Committee Opn. 2011-6

BACKGROUND

Plaintiffs in personal injury actions often seek financial assistance for medical services from Medicaid, Medicare, workers compensation carriers, or private insurance carriers. These payors may be entitled by statute or contract to reimbursement by the plaintiff if the plaintiff recovers damages. To protect themselves against liability from such claims for reimbursement, a defendant and defendant's lawyer might demand that plaintiff or plaintiff's lawyer agree to indemnify them as a condition of settlement.

ISSUES

1. May plaintiff's counsel, as part of settling a personal injury action, agree to defend and indemnify the defendants, including defense counsel and liability insurers, against an action brought against them by third parties, such as Medicare or health insurers, to recover a debt plaintiff might owe the third parties?
2. May defendant's counsel ethically request or demand that plaintiff's counsel enter into a such an agreement with defendants, including defendant's counsel and liability insurers, as a condition of settlement?³

³ This Opinion is limited to these two questions and does not address what the lawyer's duties might be if the third party provider has a valid and enforceable statutory or contractual lien against the plaintiff. See, e.g., rule 1.15(a) and Comment [1].

DISCUSSION

Introduction

Every jurisdiction that has addressed the issues presented in this opinion has answered both questions in the negative. At least twenty-one jurisdictions and two local bar associations have concluded that a lawyer agreeing to such an indemnification agreement would violate one or more rules of professional conduct.⁴ At least ten jurisdictions and one local bar association have also concluded defendant's counsel cannot request or condition a settlement on a plaintiff's lawyer agreeing to indemnify.⁵ As discussed below, this committee agrees with these conclusions.

Issue 1: Whether plaintiff's lawyer in a personal injury action may agree as a condition of settlement to indemnify and hold harmless defendant, defendant's counsel, and liability insurer.

This issue requires a consideration of the plaintiff's lawyer's ethical obligations when a defendant seeks indemnification in a personal injury action.⁶ Although the lawyer's exposure can become complicated when a defendant seeks to protect itself against liability under the Medicare, Medicaid and SCHIP Extension

⁴ Jurisdictions that have answered the first issue in the negative include: Alabama State Bar Ethics Opn. RO 2011-01; Alaska Bar Association Ethics Opn. 2014-4; Arizona State Bar Ethics Opn. 03-05; Delaware State Bar Association Committee on Professional Ethics Opn. 2011-1; Florida Bar Staff Opn. 30310 (2011); Georgia State Bar Formal Advisory Opn. 13-2; Illinois State Bar Association Advisory Opn. 06-01; Indiana State Bar Association Legal Ethics Opn. 2005-1; Maine Ethics Opn. 204 (2011); Missouri Formal Advisory Opn. 125 (2008); Montana State Bar Opn. 131224 (2013); Supreme Court of Ohio Opn. 2011-1; Oklahoma State Bar Association Ethics Opn. No. 328 (2011); Oregon State Bar Formal Opn. 2015-190; South Carolina Ethics Advisory Opn. 08-07; Tennessee State Bar Formal Ethics Opn. No. 2010-F-154; Utah Ethics Advisory Opn. 11-01; Vermont Bar Formal Ethics Opn. 2013-1; Virginia Legal Ethics Opn. 1858 (2011); Washington State Bar Association Advisory Opn. 1736 (1997); Wisconsin Formal Opn. E-87-11 (1998). In addition, at least two local bar associations have reached the same conclusion. See New York City Bar Association Formal Opn. 2010-3; Philadelphia Bar Association Professional Guidance Committee Opn. 2011-6 (2012).

⁵ Jurisdictions that have addressed the second issue, all of which answered in the negative are: Alabama State Bar Ethics Opn. RO 2011-01; Alaska Bar Association Ethics Opn. 2014-4; Florida Bar Staff Opn. 30310 (2011); Missouri Formal Advisory Opn. 125 (2008); Supreme Court of Ohio Opn. 2011-1; Oklahoma State Bar Association Ethics Opn. No. 328 (2011); Oklahoma State Bar Association Ethics Opn. No. 328 (2011); Utah Ethics Advisory Opn. 11-01; Vermont Bar Association Advisory Opn. 2013-1; Virginia Legal Ethics Opn. 1858 (2011). In addition, the New York City Bar Association reached the same result.

⁶ The Committee notes that pursuant to California Rule of Court, rule 3.1130(b), a lawyer may not act as a surety ("An officer of the court or member of the State Bar may not act as a surety.") However, whether the indemnification clause sought by defendants might make plaintiff's lawyer a surety is a question of law beyond the purview of this committee.

Act of 2007 (“MMSEA”),⁷ the Committee’s opinion regarding the ethics of the situation is the same regardless of whether the potential claim for reimbursement against the defendant arises under that Act, Workers Compensation, or a private insurance policy.

Payment of Personal or Business Expenses Incurred by a Client

Rule 1.8.5 is relevant to whether a lawyer may provide financial assistance to a client in the form of an indemnification agreement. Rule 1.8.5(a) provides “[a] lawyer shall not directly or indirectly pay or agree to pay, guarantee, or represent that the lawyer or lawyer’s law firm will pay the personal or business expenses of a prospective or existing client.” Paragraph (a) applies whether the lawyer provides financial assistance “directly or indirectly.” An agreement to indemnify and defend defendant or defendant’s lawyer from an action by third parties to collect on a debt owed by the lawyer’s plaintiff client fits squarely within paragraph (a)’s prohibition on “indirectly” providing financial assistance to a client. In effect, the lawyer promises to provide the necessary assistance, i.e., pay the client’s debts to medical service providers, to prevent the client from being subject to a collection action. Such a promise in effect provides the client with credit, a form of financial assistance. Further, the lawyer’s agreement to indemnify the defendants and their agents to induce the defendants to go forward with the settlement is a “guarantee” within the meaning of the rule and would provide another basis for finding a rule 1.8.5(a) violation.

Paragraph (b) provides several exceptions to the paragraph (a) proscriptions, but the Committee concludes that none of them is applicable. First, subparagraph (b)(3) permits a lawyer to advance the costs of prosecuting or defending a claim or otherwise protecting the interests of the client and further provides that the repayment may be made contingent on the matter’s outcome. The “costs” under this subsection, although not restricted to taxable costs recoverable under statute or rule of court, are “limited to any *reasonable*”*

⁷ Of particular concern for defendants under the MMSEA are the new reporting requirements enacted in 2007. Under these new requirements, when there is a settlement, the defendant and its insurer have a duty to report certain payment details to the government and can be fined substantial amounts if they fail to report accurately. Because the defendant typically must rely on information provided by the plaintiff and because, as explained in the next paragraph, defendants and their agents might be subject to personal liability, there is an incentive for defendants to seek protection from the risk that the plaintiff has provided inaccurate information.

Further, pursuant to 42 U.S.C. §§ 1395y(b)(2)(B)(ii) and 42 C.F.R. 411.24(e) and (g), Medicare has a “direct right of action” against a primary plan, entity, insurer, physician or lawyer that received a primary payment. This would include plaintiffs and defendants as well as their respective lawyers or other agents. In addition, under 42 C.F.R. 411.24(c)(ii)(2), if Medicare takes legal action, it “may recover twice the amount” from a recipient of the funds. See, e.g., *United States v. Harris*, (N.D. W.Va. March 26, 2009) 2009 WL 891931 (“[Plaintiff’s lawyer] is individually liable for reimbursing Medicare in this case because the government can recover ‘from any entity that has received payment from a primary plan,’ including an attorney.”)

expenses of litigation, including court costs, and *reasonable** expenses in preparing for litigation or in providing other legal services to the client.” (Emphasis added.) The liability that a lawyer could incur under the indemnification agreement are not “reasonable expenses” as contemplated under the rule.⁸ To the contrary, by agreeing to indemnify defendants and their agents, the lawyer is exposed to liability for potentially substantial reimbursement payments.⁹

Second, although subparagraph (b)(2) permits a lawyer, “[a]fter the lawyer is retained by the client to lend money to the client based upon the client’s written* promise to repay the loan,” provided the lawyer complies with rules 1.7(b), 1.7(c), and 1.8.1. The Committee does not believe that an agreement to indemnify a creditor of a client constitutes a loan within the meaning of rule 1.8.5(b)(2). The exception in subparagraph (b)(2) to rule 1.8.5(a)’s prohibition on providing financial assistance to a client is not applicable.¹⁰

A third exception appears at first glance to apply in an indemnity situation. Subparagraph (b)(1) permits a lawyer to pay or agree to pay business or personal expenses to third persons “from funds collected or to be collected for the client as a result of the representation,” provided the client gives consent. Generally, it would be expected that reimbursement payments a personal injury client would make to medical service providers or their insurers would be made from funds that the client’s lawyer would have collected in the action. However, the indemnification clause addressed in this opinion would not be limited to holding the indemnifying lawyer liable only to the extent that funds “collected for the client” remained in the lawyer’s possession. The lawyer would be subject to open-ended liability to third persons regardless of whether any recovered

⁸ Compare L.A. County Bar Formal Opn. 517 (2006) (“An attorney may agree to advance *reasonable* expenses of prosecuting or defending a client matter and waiving the right to repayment by the client if there is no recovery. Similarly, at either the inception of the representation or during the course of litigation, an attorney may agree to indemnify the client *for court-ordered costs* if the client is not the prevailing party.”) (Emphasis added.)

⁹ Subparagraph (b)(4), newly enacted effective November 1, 2018, similarly permits a lawyer to pay the costs to prosecute or defend a claim or action, “or of otherwise protecting or promoting the interests of an *indigent person** in a matter in which the lawyer represents the client.” (Emphasis added.) For the same reasons cited with respect to subparagraph (b)(3), this provision is inapplicable here.

¹⁰ Even if an agreement to indemnify a creditor of a client could be deemed a “loan” to a client, it is not certain that subparagraph (b)(2) is intended to permit such a loan. Few other jurisdictions have a provision that permits a lawyer to lend money to a client even after the lawyer has commenced representation. Those that do limit loans to clients whose ability to initiate or maintain the matter for which the lawyer has been retained would be adversely affected without such financial aid, (see La. Rule 1.8(e)(4)(i)), or would otherwise be put under “substantial pressure” to settle a case because of financial hardship and not on the merits, (see Minn. Rule 1.8(e)(3); N.D. Rule 1.8(e)(3).) Moreover, such loans are limited to the minimum sum necessary to meet the needs of the client and the client’s dependents. Here, the indemnification agreement is not intended to maintain an action and avoid a settlement but is presented as a prerequisite to settlement.

client funds remained in the lawyer's trust account and were available to be used. The exception in subparagraph (b)(1) of rule 1.8.5 thus would not be applicable.¹¹

Accordingly, it is the Committee's opinion that rule 1.8.5 prohibits a lawyer from providing the contemplated indemnification of defendants and their agents, including their lawyers. This conclusion conforms to that of nearly every ethics opinion that has addressed the issue.¹²

Conflict of Interest and Independence of Professional Judgment

Under rule 1.7(b), a lawyer is prohibited from representing a client "if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client, a former client or a third person,* or by the lawyer's own interests." (Emphasis added.) The contemplated indemnification agreement would appear to create a financial interest of the lawyer in the subject matter of the litigation that goes beyond a source of payment of the lawyer's fees. Rule 1.7(b), however, *authorizes* a lawyer to continue representing a client if the client gives "informed written consent."¹³ However, we conclude that informed written consent is not

¹¹ Cal. State Bar Formal Opn. 1988-101, decided under the former Rules, is not contrary. In that opinion, the committee posited a set of facts where both client and lawyer had acknowledged in writing a health care provider's interest in being paid out of any recovery. However, when recovery was had, the client directed the lawyer not to pay any proceeds of the recovery to the provider but to pay them to the client alone. That opinion advised that the lawyer's best course of action under these facts was to retain the disputed amount in the lawyer's trust account and commence an action in interpleader. That opinion stated that "[u]ndertaking such obligations [i.e., acknowledging the provider's lien] to a third party places the attorney in a potential conflict of interest under California Rule of Professional Conduct 3-310(B) [now rule 1.7(b)]. Rule 4-210 [now rule 1.8.5], however, allows for this conflict of interest, but only where there is full consent by the client." The State Bar opinion is not in conflict with this Committee's conclusion because, under the facts of that opinion, the lien amounts were known and the recovery funds still remained in the lawyer's trust account, thus making the rule 4-210(A)(1) [now rule 1.8.5(b)(1)] exception applicable. As noted, however, the indemnification clause contemplates open-ended personal liability for the lawyer regardless of the location of the recovered funds. Such an undertaking by a lawyer does not fit within the rule 1.8.5(b)(1) exception.

¹² Of the ethics opinions the Committee has reviewed, only two have not relied on their jurisdiction's rule 1.8.5 analogs, which are generally derived from ABA Model Rule 1.8(e). See N.C. State Bar Ethics Opn. RPC 228 (1996) and Vermont Advisory Ethics Opn. 96-05. The latter opinion was issued when Vermont still had lawyer conduct rules based on the ABA Code of Professional Responsibility. That opinion relied on EC [Ethical Consideration] 5-1, which provided: "The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties. Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client." The former opinion from North Carolina confusingly cited only "Rule 5.1(b) of the Rules of Professional Conduct" in support of its conclusion without further explanation. In the ABA Model Rules, rule 5.1 concerns the duties of managerial and supervisory lawyers. Although it might be surmised that the drafter of the opinion intended to cite EC 5-1, similar to Vermont, North Carolina adopted the Model Rules in 1985.

¹³ Rule 1.0.1(e) defines "informed consent" to mean "a person's* agreement to a proposed course of conduct after the lawyer has communicated and explained (i) the relevant circumstances and (ii) the

available under rule 1.7(b) because it would not overcome the rule 1.8.5 prohibition and because of the additional requirements of rules 1.2 and 2.1.¹⁴ Rule 1.2(a) provides in pertinent part that “[a] lawyer shall abide by a client’s decision whether to settle a matter.” Rule 2.1 provides in relevant part that “[i]n representing a client, a lawyer shall exercise independent professional judgment and render candid advice.” Taken together, these rules operate to prohibit a lawyer from agreeing to the indemnification. The Arizona opinion on indemnification explains how the interaction of these rules create an impermissible conflict between the interests of the client and those of the lawyer:

The mere request that an attorney agree to indemnify [defendants] against lien claims creates a potential conflict of interest between the [plaintiff] and the [plaintiff’s] attorney. The attorney’s refusal, for ethical reasons, to accede to such a demand as a condition of settlement could prevent the client from effectuating a settlement that the client otherwise desires.

The insistence upon an attorney’s agreement to indemnify as a condition of settlement could, for example, cause the lawyer to recommend that the client reject an offer that would be in the client’s best interest because it would potentially expose the lawyer to the payment of hundreds of thousands of dollars in lien expenses, or litigation over such lien expenses.

The attorney’s acceptance of such a condition would also create a conflict of interest with an existing client under ER 1.7 because the client’s failure or refusal to repay a lien could make the client’s lawyer its guarantor.

material risks, including any actual and reasonably* foreseeable adverse consequences of the proposed course of conduct.” Rule 1.0.1(e-1) defines “informed written consent” to mean “that the disclosures and the consent required by [1.0.1(e)] must be in writing.*”

¹⁴ Other jurisdictions are in accord that the contemplated indemnification agreement creates an impermissible conflict of interest. See, e.g., Alabama State Bar Ethics Opn. RO 2011-01; Alaska Bar Association Ethics Opn. 2014-4; Arizona State Bar Ethics Opn. 03-05; Delaware State Bar Association Committee on Professional Ethics Opn. 2011-1; Florida Bar Staff Opn. 30310 (2011); Georgia State Bar Formal Advisory Opn. 13-2; Illinois State Bar Association Advisory Opn. 06-01; Indiana State Bar Association Legal Ethics Opn. 2005-1; Maine Ethics Opn. 204 (2011); Montana State Bar Opn. 131224 (2013); Supreme Court of Ohio Opn. 2011-1; Oklahoma State Bar Association Ethics Opn. No. 328 (2011); Oregon State Bar Formal Opn. 2015-190; South Carolina Ethics Advisory Opn. 08-07; Tennessee State Bar Formal Ethics Opn. No. 2010-F-154; Utah Ethics Advisory Opn. 11-01; Vermont Bar Formal Ethics Opn. 2013-1; Virginia Legal Ethics Opn. 1858 (2011); Washington State Bar Association Advisory Opn. 1736 (1997); Wisconsin Formal Opn. E-87-11 (1998). In addition, at least two local bar associations have reached the same conclusion. See New York City Bar Association Formal Opn. 2010-3; Philadelphia Bar Association Professional Guidance Committee Opn. 2011-6 (2012).

That might materially limit the representation by virtue of the lawyer's own interest in having the client (rather than the lawyer) pay the liens in full. Even if the lawyer were willing to accept that potential financial burden, and even if the lawyer were ethically permitted to provide such financial assistance, such an agreement might compromise the lawyer's exercise of independent professional judgment and rendering of candid advice in violation of ER 2.1.

While ER 1.2 requires an attorney to abide by a client's decision whether to accept an offer of settlement, a settlement agreement that requires the attorney to indemnify, or hold the [defendants] harmless, violates ER 1.8.

Since, under ER 1.8, an attorney cannot ethically provide financial assistance to a client by paying, or advancing, the client's medical expenses before or during litigation, an attorney cannot ethically agree, voluntarily or at the client's or [defendant's] insistence, to guarantee, or accept ultimate liability for, the payment of those expenses. Arizona State Bar Formal Ethics Opn. 03-05 (August 2003).

This Committee has concluded that the reasoning of the Arizona opinion is persuasive, and rule 2.1 is identical to Arizona Rule 2.1, which requires that a lawyer exercise independent professional judgment.¹⁵ That independent judgment would be compromised by the lawyer agreeing to indemnify the defendants.

Second, California Rule 1.2(a) contains language identical to Model Rule 1.2(a) that requires that a lawyer "abide" by the client's decision to settle a matter.¹⁶ Notwithstanding rule 1.2, however, the client lacks authority to impose liability on the lawyer with respect to the client's obligations. Under the facts presented, the

¹⁵ This duty has been recognized in California case law. See, e.g., *Beck v. Wecht* (2002) 28 Cal.4th 289; *Gafcon, Inc. v. Ponsor & Associates* (2002) 98 Cal.App.4th 1388; *Saunders v. Weissburg & Aronson* (1999) 74 Cal.App.4th 869.

¹⁶ The Committee observes that this duty previously was implicitly recognized in the former Rules, which required a lawyer to communicate to the client any offers of a proposed plea agreement in a criminal matter and any written offers of settlement in a civil matter. Former rule 3-510(A) (now rule 1.4.1(a)). The requirements of that rule appear to have been intended to provide the client with sufficient information so that the client could make an informed decision about whether to accept the settlement offer. This view was supported by a California Supreme Court case that held: "[a]n attorney is not authorized . . . to 'impair the client's substantial rights or the cause of action itself,'" which include the decision to settle a matter. *Blanton v. Womancare Inc.* (1985) 38 Cal.3d 396 [212 Cal.Rptr. 151] ("the law is well settled that an attorney must be specifically authorized to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise settlement of pending litigation.")

lawyer would be hard pressed to independently evaluate the settlement, leaving the client without the lawyer's impartial advice on making an informed decision. The lawyer's exercise of independent professional judgment on behalf of the client would be compromised, creating an impermissible conflict between the client's desire to finalize the settlement of the client's action and the lawyer's understandable reluctance to be liable for a reimbursement payment or the costs of defending against such a claim.

Withdrawal from the representation

Rule 1.16(a)(2) provides that a lawyer must withdraw from the representation if the lawyer "knows* or reasonably* should know that the representation will result in violation of these rules or of the State Bar Act." The Committee concludes that a client's request that the lawyer execute an indemnification agreement would not by itself implicate rule 1.16(b)(2). A client might suggest particular actions in the hope that the lawyer is not constrained by a professional duty, and the lawyer's proper response would include communicating with the client as required by rule 1.4(a) and (b) so that the client can make informed decisions. However, the lawyer must withdraw if the client were to demand that the lawyer agree despite the lawyer's explanation. *Accord*, Georgia State Bar Formal Advisory Opn. 13-2 (citing to Georgia Rule 1.16, cmt. [2].) See also Arizona State Bar Ethics Opn. 03-05; Indiana State Bar Association Legal Ethics Opn. 2005-1.

In sum, a plaintiff's lawyer may not, as a condition of settlement, enter into an agreement to indemnify and defend the defendant, or defendant's counsel or liability insurer against claims that might be brought by plaintiff's third-party medical service providers to collect on plaintiff's debts.

Issue 2: Whether defendant's lawyer in a personal injury action may condition settlement of plaintiff's matter on plaintiff's counsel's agreement to indemnify.

Rule 8.4(a) provides it is professional misconduct for a lawyer to: "violate these rules, the State Bar Act, knowingly* assist, solicit, or induce another to do so, or do so through the acts of another." As discussed in relation to the first issue, a lawyer's agreement to indemnify under the circumstances posited would violate rules 1.8.5, 1.7(b), and 2.1. Consequently, defendant's lawyer can neither request nor demand that plaintiff's lawyer agree to indemnify as a condition of settlement because the defendant's lawyer would violate rule 8.4(a) by soliciting, if plaintiff's lawyer were to refuse, or by inducing or assisting in a violation if the defense lawyer were successful in obtaining plaintiff's lawyer's

agreement. Other jurisdictions that have addressed this second issue are unanimous in this conclusion.¹⁷

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

¹⁷ See note 5.