
**E-92-3 A contingent fee contract as collateral
for a personal loan to a lawyer**

Facts

Assume *Attorney A*, a sole practitioner, and an individual, *Client B*, execute a valid personal injury written contingency agreement under SCR 20:1.5(c). Assume further that the written agreement provides for an attorney's lien consistent with SCR 20:1.8(j)(1) and (2). Disregarding the value of the contingency case or the contingent fee, may *Attorney A* ethically offer, tender or negotiate the attorney's lien in *Client B's* case as collateral, assignment or guarantee for a personal loan that *Attorney A* seeks for himself? Would the answer differ if the proposed lender was a sophisticated commercial lending institution or another party who has no experience as a lender?

Opinion

Under no circumstances may a lawyer use a contingent fee contract with a client as security for a personal loan to the lawyer. SCR 20:1.8(j)(2) permits a lawyer to "contract with a client for a reasonable contingent fee in a civil case"; but SCR 20:1.8(j)(intro) otherwise prohibits a lawyer's acquisition of "a proprietary interest in the cause of action or the subject matter of litigation the lawyer is conducting. . . ." A lawyer's securing a personal loan with a contingent fee contract would violate this general prohibition as well as the basis for it. As stated in the "comment" to SCR 20:1.8(j), the basis for the rule is in common law champerty and maintenance. Because a lawyer's acquiring a personal loan in the manner proposed would make the lawyer an interested investor in his or her client's cause of action, the general prohibition of SCR 20:1.8(j) therefore is implicated.

Furthermore, "(i)f there were a market for buying and selling causes of action, contingent fees would probably not be necessary. Injured parties could sell their claims in that market and use the funds to hire lawyers. *But such a market is prohibited by laws that ban champertous exchanges and limit the assignability of causes of action. Banks, lacking assignable security, thus cannot justify lending funds for legal fees on the unsecured hope that a statistical*

likelihood of recovering will pay off the loan.” (Emphasis supplied.) Wolfram, *Modern Legal Ethics*, p. 528 (1986).

Finally, a client’s right to discharge his or her lawyer renders a contingent fee contract an inappropriate form of collateral. The actual or potential impact of the proposed conduct could well affect the lawyer’s representation of the client and the lawyer’s exercise of independent professional judgment. SCR 20:1.7(b), SCR 20:1.8(a) and SCR 20:2.1.

For all of the reasons stated above, the committee disapproves the proposed conduct.