

NEW HAMPSHIRE BAR ASSOCIATION
Ethics Committee Formal Opinion #1985-86/3
Insurance Counsel: Acceptance of a Referral from an Insurance Company
December 10, 1985

RULE REFERENCES:

*Rule 1.8

CODE REFERENCES

*DR5-107

SUBJECTS:

*Confidentiality
*Consent
*Insurance
*Fees
*Minors

STATUTORY REFERENCES

*Superior Court Rule 111

ANNOTATION:

An attorney may accept payment of fees from defendant's insurance company for the representation of parents in a minor's settlement lawsuit if:

- 1.) The clients consent after consultation;
- 2.) There is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship, and
- 3.) Information relating to representation of a client is protected as required by Rule 1.6. (Rule 1.8(6); DR5-107).

QUESTION:

Is it proper for an attorney to accept compensation for professional services from the defendant's insurer while representing the parents in a minor plaintiff's suit requiring approval by New Hampshire courts (Settlement On Behalf of Minors under Superior Court Rule 111)?

RESPONSE:

Under the current Code of Professional Responsibility, Disciplinary Rule 5-107 provides as follows:

- (A) Except with the consent of his client after full disclosure, a lawyer shall not:
- (1) Accept compensation for his legal services from one other than his client.
 - (2) Accept from one other than his client any thing of value related to his representation of or his employment by his client.
- (B) A lawyer shall not permit a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services.

Accordingly, the current Code clearly contemplates circumstances in which a lawyer receives compensation for services rendered from someone other than his client. Consent is necessary after full disclosure and the lawyer must not allow the non-professional relationship which he or she may have with the insurance company to affect the professional relationship which he or she has with the client/parents.

The Proposed Model Rules of Professional Conduct, while using different wording, are not different. Proposed Rule 1.8 prohibits the acceptance of:

compensation for representing a client from one other than the client unless:

- (1) The client consents after consultation;
- (2) There is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
- (3) Information relating to representation of a client is protected as required by Rule 1.6.

There is no impropriety in the course of conduct described above provided all of the foregoing requirements are met, and so long as the attorney has the ability and opportunity to investigate the circumstances behind the information provided by the adjuster and to render independent professional judgment thereon.