

Informal Advisory Opinions

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Although an effort has been made to summarize the important facts of the question, not all details are included in each summary. Therefore, these summaries should be used only for general guidance. Only summaries are available; actual copies of the opinion request and answer are not available. The first four digits of the opinion number indicate the year the opinion was issued.

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INFORMAL OPINION 2006-0077

Question: Plaintiff has been contacted by a finance company that advances loans. The loans are made by a finance company that is licensed by the Missouri Division of Finance. The loan is to be used for reasons other than to support the litigation (i.e. to pay the

plaintiff's living expenses). Plaintiff must repay the loan even if the plaintiff does not prevail in the case. The lender exercised no control over the case, however, the plaintiff grants the lender a contractual lien on the case proceeds under the case of *Ford Motor Credit Co. v. Allstate Inc. Co.*, 2 S.W.3d 810 (Mo. App. W.D. 1999). Is the above situation champertous? If a plaintiff took out a loan as described above and Attorney was aware of it, would it violate the rules?

Answer: If it is a straight loan that must be repaid regardless of the outcome of the litigation, it is unlikely that it is champertous. Therefore, although a Missouri attorney could be aware of the transaction, it will not violate the Rules of Professional Conduct in the absence of any other ethical problem with the transaction. *See also*, Informal Opinion 2005-0062.

INFORMAL OPINION 2005-0062

Question: Attorney was recently contacted by a finance company that advances funds to plaintiffs. The company only makes loans to people with pending personal injury or workers compensation cases, prior to the appellate stage. The plaintiff is not required to repay the loan if plaintiff is not successful, and the attorney is expected to disburse funds to the company directly from the attorney's trust account. The company claims that its loans are not champerty because they are not overtly supporting litigation. Can

Attorney ethically get involved with this company?

Answer: Under Rule 4-1.8(e), an attorney may not provide financial assistance to a client. It is likely that an attorney's involvement with loans by this company would be considered champertous. Despite the fact that a client might not use the funds directly for litigation, it appears that the funds are intended to support litigation. If the transaction is champertous, it is not permissible for an attorney to be involved. In *Rancman v. Interim Settlement Funding Corp.*, 789 N.E.2d 217,221 (OH 2003), the Ohio Supreme Court stated:

Except as otherwise permitted by legislative enactment or the Code of Professional Responsibility, a contract making the repayment of funds advanced to a party to a pending case contingent upon the outcome of that case is void as champerty and maintenance. Such an advance constitutes champerty and maintenance because it gives a nonparty an impermissible interest in a suit, impedes the settlement of the underlying case, and promotes speculation in lawsuits.

INFORMAL OPINION 2006-0092

Question: Attorney's firm is currently using a tape method to back up data. Attorney is considering backing up information through a third party contractor. This would be done

automatically, online, and on a nightly basis. Does this create a confidentiality issue that Attorney should be concerned about?

Answer: It is permissible for Attorney to use a third party contractor to backup Attorney's law office data online. Attorney must take reasonable steps to assure the confidentiality of the data. Attorney should receive assurances from the third party contractor that the data, from the time it leaves Attorney's office computers, will be in a format that is secure at a level that meets industry standards at the time of transmission.

The third party contractor must have an enforceable obligation to preserve the confidentiality and security of the data.

INFORMAL OPINION 2007-0013

Question: Attorney has noticed that a paralegal in her area has her own separate "paralegal" practice where she advises clients and drafts documents for them. Attorney wants to know if paralegals are able to practice in Missouri, without a supervising attorney.

Answer: Paralegals are not regulated in Missouri. Paralegals do not have the

authority to provide legal services. A paralegal may perform only the services that any other nonlawyer may provide. If Attorney is aware of a nonlawyer who is engaging in the practice of law, Attorney should report that person to OCDC, the Prosecuting Attorney, the Attorney General, or all three.



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