

AVOIDANCE OF PROPRIETARY INTERESTS IN LITIGATION

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Reprinted from *Bench & Bar of Minnesota* (December 1981)

Supreme Court Amends DR 5-103

DR 5-103 of the Code of Professional Responsibility deals with the avoidance of proprietary interests in litigation. Recently the Minnesota Supreme Court amended DR 5-103(B). Prior to its amendment, DR 5-103(B) provided as follows:

While representing a client in connection with contemplated [sic] or pending litigation, a lawyer shall not advance or guarantee financial assistance to his client, except that a lawyer may advance or guarantee the expenses of litigation, including courts costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses.

In amending DR 5-103, the foregoing language has in effect become DR 5-103(B)(1). The Court has also added a new DR 5-103(B)(2) which provides as follows:

A lawyer may guarantee a loan reasonably needed to enable the client to withstand delay in litigation that would otherwise put substantial pressure on the client to settle a case because of financial hardship rather than on the merits, provided the client remains ultimately liable for repayment of the loan without regard to the outcome of the litigation and, further provided, that no promise of such financial assistance was made to the client by the lawyer, or by another in his behalf, prior to the employment of that lawyer by that client.

The effect of the amendment is obvious. It now permits lawyers to guarantee loans in certain subsistence situations, provided that ultimate liability for the loan remains with the client and further provided that no advance promises of financial assistance are made prior to employment.

Advisory Ethics Opinions Suspended

I have previously written that the availability of my office to render informal advisory ethics opinions to attorneys was in jeopardy due to the overwhelming increases in disciplinary case loads. At its September 18, 1981, meeting, the Lawyers Professional Responsibility Board directed the suspension of this important educational function pending an improvement in the backlog of disciplinary cases. The Board and the Director will be reviewing the situation every three months to determine when this important service can be reinstated.

The Board's action was taken very reluctantly and it is committed to restoring this service as soon as is feasible.

Even though the individual informal advisory ethics opinion service is suspended, the other educational functions of the Board and Director continue. These include this column, participation in

continuing legal education seminars, assistance to the bench in dealing with ethics problems which come before it, and attendance at state and local bar association meetings. I very much regret the suspension of the advisory opinion service but know that you will be understanding and patient until we can either restore the service or make suitable substitute arrangements.