

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

the cost of obtaining all necessary permits, including the zoning variance. The attorney asks whether it is proper for him to bill the client rather than the subcontractor for his services.

OPINION

The answer to the inquiry depends upon whether the contractor or the subcontractor was the client. If the subcontractor retained the attorney to obtain the zoning variance, the bill should be sent to the subcontractor who had assumed the obligation of carrying out that part of the work. On the other hand, if the attorney was retained by the contractor, the bill should be sent to him, even though he is entitled to reimbursement from the subcontractor. In the latter case, it may be that as a matter of law the lawyer has a direct cause of action against the subcontractor as third party beneficiary of the subcontractor. In that case, it would not be improper, if the contractor fails to pay, for the attorney to assert his claim directly against the subcontractor.

As long as no conflict of interest exists, the attorney may represent the contractor on some matters and the subcontractor on others and bill the client for whom the services were rendered.

Opinion #121-10/30/69 (25-69) Topic: Attorney signing medical lien
Digest: Not unethical for a lawyer
to sign medical lien form.

QUESTION

May an attorney sign the medical lien form quoted below or any assignment or lien form in favor of a doctor?

"Patients' Name: _____

To: Attorney _____ For Doctor _____

I do hereby authorize the above doctor to furnish you, my attorney, or any substitute attorney, with a full report of his examination, diagnosis, prognosis, etc., of myself in regard to the accident in which I was involved.

I hereby authorize and direct you, my attorney, or any substitute attorney, to pay directly to said doctor such sums as may be due and owing him for medical service rendered me both by reason of this accident and by reason of any other bills that are due his office and to withhold such sums from any settlement, judgment or verdict as may be necessary to adequately protect said doctor. I hereby further give a lien on my case to said doctor against any and all proceeds of any settlement, judgment or verdict which may be paid to you, my attorney, or substitute attorney, or myself as the result of the injuries

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for which I have been treated or injuries in connection therewith.

I fully understand that I am directly and fully responsible to said doctor for all medical bills submitted by him for services rendered me and this agreement is made solely for said doctor's additional protection and in consideration of his waiting for payment. I further understand that such payment is not contingent on any settlement, judgment or verdict by which I may eventually recover said fee, _____.

Dated: _____ Patient's Signature: _____

The undersigned being attorney of record for the above patient does hereby agree to observe all the terms of the above and agrees to withhold such sums from any settlement or verdict as may be necessary to adequately protect said doctor above named and I further agree and assume payment of said lien in the event of a substitution of attorneys.

Dated: _____ Attorney's Signature _____ "

OPINION

In the opinion of the Committee there is nothing unethical or improper about an attorney signing the quoted form or any lien form in substantially the same terms, assuming the client is made to understand that the attorney is in no way representing the doctor. This opinion is not intended to recommend the use of this or any form of lien assignment or the advisability of signing it by any attorney.

Opinion #122 - 10/30/69 (21-69)

Topic: Advertising by association of attorneys

Digest: An association of defense attorneys may use billboards and other information media to improve the public image of attorneys representing persons accused of crime, and to influence legislation.

Canons: Former Canons 27, 28, 40. Code of Professional Responsibility (effective 1/1/70) Canons 2 & 8

QUESTION

A group of attorneys who regularly defend persons accused of crimes has organized a "defenders association". It wishes to improve the public image of Public Defenders, Administrators, Legal Aid Societies and all other attorneys representing such defendants. It is opposed to the enactment of certain proposed legislation affecting criminal procedure. As part of its program may the association: