Opinion #372 - 2/26/75 (54-74)

Topic: Securing legal fees under N.Y. No-Fault Law.

Digest: Not improper to assign to attorney benefits under no-fault insurance to secure attorneys fees.

Code: EC 5-7; 9-2

## QUESTION

Is the assignment to an attorney of his client's claim for first-party benefits under the New York No-Fault Statute (Ins. L. Secs. 671 et seq.) proper?

## OPINION

While EC 5-7 permits an attorney "to protect his right to collect a fee for his services by the assertion of legally permissible liens", such right is limited to methods that are not improper. Section 475 of the Judiciary Law provides an attorney's lien at "the commencement of an action, special or other proceeding in any court or before any state, municipal or federal department, except a department of labor,..." on the client's cause of action, claim or counterclaim.

N.Y. State 253 (1972) held that it would not be improper for a lawyer to take and record a mortgage to secure payment of a specific fee, reasonable in amount and without interest, agreed to by the client who also agrees to the mortgage arrangement, although such an arrangement would not be proper in all situations. The justification for the procedure approved therein was that the client would not be able to pay his attorney for unpaid prior legal services and for current services until he sold his house, which he apparently was planning to do.

Similarly, it would not be improper for a lawyer to take an assignment of his client's claim for first-party benefits under a "no-fault" statute if the assignment is reasonable in amount and agreed to by the client. Permitting such assignments properly assures the availability of legal services to claimants who might not otherwise have access thereto.

In all events the lawyer must act "in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession". EC 9-2.

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