

ADVISORY ETHICS OPINION 94-05

SYNOPSIS:

An attorney may, with the client's consent, request that a client's lump sum worker's compensation benefits be mailed to the attorney, as long as the draft is made payable solely to the client. An attorney should not insist that a client's current weekly disability payments be mailed to the attorney even if these benefits are made payable solely to the client.

FACTS:

The requesting attorney has a worker's compensation practice in which he accepts employment on a contingency fee basis to secure various worker's compensation benefits on behalf of his clients. The attorney seeks clarification of this Committee's Opinion 91-17, in which we concluded that any attorney may accept employment on a contingency basis to represent a client seeking **past due** temporary total disability payments for a worker's compensation claim. The attorney now requests whether he may, with the client's consent, request that whatever worker's compensation benefits might be obtained for the client be payable by draft to the client alone, but mailed to the attorney at the attorney's office.

DISCUSSION:

In Opinion 91-17, we discussed the acceptability of contingency fee arrangements with clients under DR 1-106(B)(8), and discussed at EC 2-20.

This Committee also reviewed PCB Opinion #3 in which the PCB disfavored contingent fee arrangements where the attorney sought to take the one-third contingent fee out of the client's weekly temporary total disability award. We agree with the PCB that this does appear to impose a hardship upon the client since temporary total benefits are a sustenance level replacement for actual wages.

We are mindful, therefore, that while a contingency fee is expressly approved at Worker's Compensation Rule 19 (b), the method of arranging payment for the fee must not prejudice the client's right to sustenance level income during a period of work related disability. The Committee concludes, therefore, it is permissible to, with the client's consent, request that a lump sum award for past or future permanent partial disability or past due temporary total disability be mailed to the attorney. Contingent fees may be taken out of weekly benefits with the consent and agreement of the client. The Committee is assuming that the attorney would release the draft upon request by the client if the client disputed the bill asserted by the attorney, or otherwise insisted that the draft be turned over without making payment to the attorney out of the worker's compensation proceeds. All benefit checks are assumed to be made payable solely to the claimant.