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Informal Opinion 09-04

A Licensed Insurance Adjuster as an Employee of a Law Firm

You have asked whether there are any ethical concerns if your law firm hires a licensed insurance adjuster to negotiate personal injury settlements or whether your firm can only hire attorneys to negotiate settlements. Your firm represents injured plaintiffs. You have also asked whether a licensed insurance adjuster's compensation can be tied to the amount of fees they have generated.

Non-lawyer assistants are permitted provided that they are under the supervision of a lawyer and the lawyer abides by Connecticut Practice Book Section 2-44A and Rule of Professional Conduct 5.3. Practice Book Section 2-44A governs the unauthorized practice of law. Connecticut Practice Book Section 2-44A (a) defines the practice of law as the "ministering to the legal needs of another person and applying legal principles and judgment to the circumstances and objectives of that person." Section 2-44A (a) includes in its definition several examples of prohibited activities, particularly providing advice regarding someone's legal rights or responsibilities or with regard to any matter involving the application of legal principles to rights, duties, obligations or responsibilities. See Section 2-44A (a) (2). In addition, Section 2-44A (a) (3) provides that a non lawyer shall not draft any legal document or agreement involving or affecting the rights of a person, and Section 2-44A (6) includes in the definition of document a "release." The settlement of any plaintiff's personal injury claim involves the plaintiff executing a release. Section 2-44 (a) (3) should not be read to prohibit a non lawyer from filling in information on a pre-printed or previously drafted form release such as the amount, the parties, the date of the accident and the matter in dispute, so long as that form release has been drafted by an attorney and an attorney provides advice regarding the legal rights and responsibilities in executing a release.

Rule of Professional Conduct 5.3 (1) requires that the lawyer have in effect "measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer". The lawyer "with direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer." Rule 5.3(2). The lawyer can be held responsible for the non-lawyer's action. Rule 5.3(3).

Ethical problems will arise if a non-lawyer is given too much authority and acts independent of the lawyer and without adequate supervision. An employee adjuster negotiating settlements must be supervised by an attorney and the employee cannot act independently. A lawyer who does not supervise his employee adjuster will be found to have violated Rule 5.3. In Re Jones , 2 Cal. St. Bar Ct. Rptr. 411 (Cal Bar CT. Review Dep't 1993). The foregoing ethical limits apply to a law firm which employs a licensed insurance adjuster regardless of whether the firm is negotiating a settlement with a representative of the other party who is an attorney or non-attorney, e.g., an adjuster employed by an insurance company, or a defendant in a personal injury case.

Your second question asks whether a licensed insurance adjuster's compensation can be tied to the amount of fees they generate. Rule 5.4 of the Connecticut Rules of Professional Conduct, in its relevant section, states:

- (a) A lawyer or law firm shall not share legal fees with a non-lawyer, except that:
 - (3) A lawyer or law firm may include non-lawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

Rule 5.4 prohibits the sharing of legal fees with a non-lawyer. See Informal Opinion 99-25. As proposed, you are unable to compensate the non-lawyer if the compensation is tied to the "receipt of particular fees" as opposed to the sharing of a percentage of net profits. Informal Opinion 93-01.

Your firm can hire a licensed insurance adjuster as an employee. Like any other employee, the adjuster cannot practice law and must be supervised by an attorney. Your firm cannot pay the employee based upon receiving fees in particular cases.

THE COMMITTEE ON PROFESSIONAL ETHICS

By _____
Wick R. Chambers, Chairman