

Committee Opinion
March 31, 1988
Committee Op Withdrawn
November 18, 2021

LEGAL ETHICS OPINION 1060

COSTS – MEDICAL RECORDS.

You advise that your firm took on a personal injury case from another attorney a month ago. The proper authorization forms were sent to the doctor for release of medical records. In return, your office received a request from the doctor to guarantee payment upon settlement and to pay him \$400 per day if he had to testify in court. Your firm agreed to the above, but never received the doctor's records. You also advise that the doctor called your clients and advised them to change attorneys since he was not going to release records until his fee was paid. Your firm plans to subpoena the records.

You wish to know whether you must pay the doctor for the records since your firm will be forced to go to court to secure them.

Disciplinary Rule 5-103(B) [DR:5-103] states that, "While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to his client, except that the lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses." See also L E Op. No. 773 and L E Op. No. 820.

The Committee advises that pursuant to DR:5-103(B), should the doctor release the records, you may advance the costs of the records provided your client remains ultimately liable for such expenses. Whether you are obligated to pay the doctor for the records which you have had subpoenaed is a legal question beyond the purview of this Committee.

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Legal Ethics Committee Notes. – Rule 1.8(e)(2) allows a lawyer to pay litigation costs and expenses on behalf of an indigent client.