

ETHICS OPINIONS ON INDEMNIFICATION

The National Scene

**Washington Defense Trial Lawyers
Asbestos Litigation: The Never Ending Story
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Seattle**

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PERSPECTIVE

- ▶ **A little background....**
 - **Ethics practice**
 - **Asbestos practice**

INTRODUCTION

- ▶ **Key ABA Model Rules**
- ▶ **Developments nationally**
- ▶ **Developments regionally**

KEY ABA MODEL RULES

- ▶ **Model Rule 1.8(e)**
- ▶ **Model Rule 1.7(a)(2)**
- ▶ **Model Rule 8.4(a)**
- ▶ **Model Rule 1.15(d)**

KEY ABA MODEL RULES

▶ Model Rule 1.8(e)

A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

- (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and**
- (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.**

KEY ABA MODEL RULES

▶ Model Rule 1.7(a)(2)

Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

KEY ABA MODEL RULES

▶ Model Rule 8.4(a)

It is professional misconduct for a lawyer to:

violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

KEY ABA MODEL RULES

▶ Model Rule 1.15(d)

Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

DEVELOPMENTS NATIONALLY

- ▶ **No ABA ethics opinion (yet)**
- ▶ **Earlier opinions**
- ▶ **More recent opinions**

DEVELOPMENTS NATIONALLY

▶ Earlier opinions

- Like Washington, focused on indemnification/hold harmless generally
- Examples:
 - √ North Carolina: Opinion 228 (1996)
 - √ Tennessee: 98-F-141 (1998)
 - √ Wisconsin: E-87-11 (1998)
 - √ Arizona: 03-05 (2003)
 - √ Illinois: 06-01 (2006)

DEVELOPMENTS NATIONALLY

▶ More recent opinions

- Began to mention Medicare specifically
- Examples:
 - √ Indiana: Op. 1 (2005)
 - √ New York City: 2010-3 (2010)
 - √ Florida: 30310 (2011)
 - √ Philadelphia: 2011-6 (2012)
 - √ West Virginia: 2013-01 (2013)

DEVELOPMENTS NATIONALLY

▶ More recent opinions

- Opinions that deal with the issue generally are going into greater depth
- Examples:
 - √ Tennessee: 10-F-154 (2010)
 - √ Ohio: 2011-1 (2011)
 - √ Utah: 11-01 (2011)
 - √ Virginia: 1858 (2011)
 - √ Alabama: 2011-01 (2011)

DEVELOPMENTS NATIONALLY

▶ More recent opinions

- Many also address defense counsel:
“Can I ask?”
- Examples:
 - √ New York: 852 (2011)
 - √ Ohio: 2011-1 (2011)
 - √ Utah: 11-01 (2011)
 - √ Virginia: 1858 (2011)
 - √ Alabama: 2011-01 (2011)

DEVELOPMENTS REGIONALLY

- ▶ **Oregon: “Stay tuned”**
- ▶ **Alaska: Nothing yet**
- ▶ **Idaho: Nothing**

QUESTIONS?