E-83-10   Nonparty organization providing funds to defray class action litigation expenses

Question

May an organization which is not a party to a class action suit provide funds to help defray the litigation expenses of the suit provided the organization does not share in any proceeds the suit might recover?

Answer: Yes, provided that any funds solicited by attorney(s) involved in the suit will not be used to compensate such attorney(s).

Opinion

The American Bar Association Committee on Ethics and Professional Responsibility addressed the propriety of soliciting funds to meet class action suit expenses in Informal Opinion 1326 (May 27, 1975). The ABA committee held that, while it was ethically proper to solicit funds to be used for expenses in connection with the preparation of class action litigation, such solicitation from nonparties would be improper if used as compensation for the attorneys representing the class. *See also* ABA Informal Opinion 1283 (Nov. 20, 1973).

Several Wisconsin Supreme Court Rules support this view. SCR 20.09(1) prohibits a lawyer from recommending employment of himself or herself to one who has not sought his or her advice regarding employment. Moreover, a lawyer should avoid influences by third parties ''who may be far more concerned with the establishment or extension of legal principles than in the immediate protection of the rights of the lawyer's individual client.'' SCR 20.23(4)(c); *see also* SCR 20.23, 20.24, 20.30(1)(b).

In the question presented, the nonparty organization wishes to provide funds for the purposes of defraying the litigation expenses of the class action suit only. No part of the contributed funds will be used to compensate the attorneys involved. In light of the above-mentioned ABA opinion and Wisconsin Supreme Court Rules, such contributions would be proper, provided that institution of the class action is fully consistent with the rights and interests of the named parties involved. SCR 20.23(4)(c), 20.24(1), and 20.35.