
E-96-1 Posting of bail by attorneys

Question

Is it a violation of the Rules of Professional Conduct for an attorney to post bail in the form of a check or cash for someone who has been arrested?

Opinion

If the funds or assets posted for the bail, bond or surety are not the attorney's own property, there is no ethical violation or violation of section 757.34 of the Wisconsin Statutes for the attorney to do so. An attorney in Wisconsin is prohibited by statute from posting his or her own funds or assets as bail, bond or surety for another person in any civil or criminal case. Wis. Stat. § 757.34. The Wisconsin Supreme Court has held that there are no exceptions to this prohibition, and it applies to all attorneys whether or not an attorney-client relationship is involved. *Gilbank v. Stephenson*, 30 Wis. 155 (1872); *see also Withers v. Tucker*, 28 Wis. 2d 82 (1965). The Professional Ethics Committee is constrained to conclude that an attorney who violates the statute engages in misconduct under SCR 20:8.4(f). Note, however, that an attorney who holds client funds in his or her trust account is not ethically prohibited from issuing trust checks for a client's bail, bond or surety.

An attorney who provides his or her own funds for a client's bail or surety also may be in violation of SCR 20:1.8(e). In the opinion of the committee, a bail, bond or surety is not a court cost nor an expense of litigation under the exceptions in 1.8(e). The committee reaffirms the conclusion reached in E-75-0.