

## Attorney May Assign His Interest in Contingency Fee

BY LAZAR EMANUEL

Attorneys Cousins and Rosenberg entered into a retainer agreement with the wife of decedent in an action for medical malpractice and wrongful death against various doctors and North Shore University Hospital. Attorney Rosenberg was the referring lawyer and Cousins the lawyer of record.

Cousins assigned his interest in the recovery twice to two different firms in exchange for funds to finance the litigation. The defendants moved to disqualify Cousins for various violations of the Disciplinary Rules based upon the assignments. They argued that Cousins had acquired an adversary interest in the litigation; that the second assignment was a violation of his agreement with the first assignee; that an attorney's borrowings in a particular matter are limited to loans to finance disbursements, not for his general funds; that by assigning his interest to a non-lawyer, he was guilty of improper fee-splitting; that his financial dealings had caused defendants to incur additional fees and expenses; and that there was no legal authority for the assignment of legal fees in a contingency matter.

Attorney Cousins argued that defendants had no standing to assert a claim based on possible violation of a disciplinary rule; that the assignment of post-judgment or post-settlement fees does not create an ethical or legal conflict and is permitted in other states; that there was no conflict of interest with the client because she was not a party to the assignment contracts; litigation financing "levels the playing field" and allows plaintiffs to go head-to-head with major insurance companies; and the IRS recognizes interest paid to finance litigation expenses as a proper deduction.

Queens Supreme Court Justice Allan B. Weiss found that defendants had standing to raise the issue of Cousins' potential conflict of interest. However, he rejected the motion to disqualify.

The Court said: "An attorney with a contractual right to participate in the proceeds of settlement or judgment is not, in any true sense of the word, a party in interest or an equitable owner of the client's cause of action." *Brandes v. North Shore University Hospital*, NYLJ, 01/26/04, p. 20.