

Meeting with Financial Institution and Law Firm Representatives to Seek Support for the Lawyers' Foreclosure Intervention Network

Federal Reserve Bank of New York
Legal Main Conference Room – 7th Floor
Wednesday May 27, 2009
3:00PM – 5:00PM

Issue: There has been very little participation in the Lawyers' Foreclosure Intervention Network ("LFIN") by law firms that represent financial institutions due to "positional" conflicts.

Purpose of this Meeting: LFIN is seeking ways to increase lawyer participation in the program by law firms that represent financial institutions.

Possible Solutions

I. Seeking Conflict Waivers on a Case-by-Case Basis

We understand that some law firms believe it would be difficult to participate because the waivers have only been granted by a subset of the financial institutions they represent. To address this problem, we propose that waivers be sought by law firms on a case-by-case basis. After a potential client's eligibility for the program has been determined, the LFIN Director emails a summary of the pro bono client's situation to all volunteer lawyers. The volunteers choose the clients they wish to represent. If a volunteer wishes to take a case which involves a financial institution that had not given a waiver to the volunteer's law firm, the waiver could be sought at the time the volunteer expresses interest in taking on the case. We could start this process by preparing a list of current financial institution plaintiffs that have not granted waivers and request that they provide waivers to law firms that have expressed an interest in LFIN.

This is a solution to a problem that has been raised by law firms, but it does not address the positional conflict issue examined below.

II. Providing Legal Advice to Lawyers with the Direct Client Relationship

Many LFIN volunteers do not have experience with some of the substantive and procedural law necessary to efficiently represent a client faced with foreclosure. We believe that it would be extremely helpful if the lawyer with the pro bono client could call on a lawyer in the firm with the positional conflict for advice on legal issues in which he or she lacks experience. It is not necessary that the lawyer at the firm with the positional conflict even know whether the questions being asked are for a pro bono client whose interests are adverse to the law firm's financial institution client or are merely hypothetical. Under this framework, even a law firm that might otherwise have ethical conflicts to resolve, should be able to provide considerable help to the LFIN volunteers without the need of a waiver from the relevant financial institution. We are seeking an opinion from the City Bar's Committee on Professional and Judicial Ethics on the validity of this arrangement.

For any law firm that concludes that it might still have positional conflicts under these conditions, regardless of whether it is granted a waiver, we could possibly make arrangements under which the law firm of the lawyer providing advice and that lawyer are anonymous. The technological options available will have to be explored. But it is clear that such an arrangement will require a third party, such as the Federal Reserve Bank of New York or the LFIN Director to maintain a list of lawyers, who have agreed to provide advice and arrange to put the two parties together, based on the type of legal advice being sought. That intermediary would provide the additional control of being able to certify that the caller is a lawyer who is currently representing a pro bono client in LFIN.

III. Secondment of Law Firm Lawyers to LFIN

Many law firms with financial institution clients are asking graduating law students to delay their starting dates and providing secondments for their lawyers. Given the needs of LFIN, law students and newly minted lawyers provide limited value because they lack experience and will need to be closely supervised. However, a lawyer experienced in real estate matters, tax, consumer law or litigation, that is seconded to LFIN could be extremely valuable. The experience of that lawyer could be leveraged by overseeing the work of several less experienced lawyers.

A law firm may second a lawyer without subjecting itself to the imputation of conflicts if the lawyer is not "associated" with the firm during the secondment. A lawyer is not associated with a law firm if any ongoing relationship between the lawyer and the firm is narrowly circumscribed and if the lawyer is effectively screened from the confidences of the firm's clients. *See* ABCNY Formal Op. 2007-2. <http://www.nycbar.org/Ethics/eth2007-2.htm>

For any law firm that concludes that it still might have positional conflicts under these conditions, we could institute controls whereby only the Federal Reserve Bank of New York and the LFIN Director knows the identity of the firm that the seconded lawyer may be associated with in the future.