

You have indicated that the Committee previously opined that an attorney who has obtained a prepaid fee has the responsibility to place the fee in a trust account from which he can transfer amounts into his general account as services are rendered for that client. Therefore, a client who discharges his attorney before a case was concluded could easily determine whether part of the prepaid fee had not been earned and should therefore be refunded in accordance with DR:2-108(D). The client could obtain such information by requesting a statement of the amounts that had been transferred to the attorney's general account, on what dates, and a description of the legal service rendered. An attorney has an obligation to the client to provide a complete itemized statement of account, upon request, for all or any part of a fee paid in advance.

You wish to know whether an attorney who has been discharged and who failed to comply with DR:9-102 by not placing the prepaid fee in a trust account can use this as an excuse for not providing the client, when requested, a complete itemized statement of account to which he would have been entitled.

The Committee believes DR:2-108(D) is the appropriate and controlling rule under the facts outlined in your inquiry. The rule states that upon termination of representation, a lawyer shall take reasonable steps for the continued protection of his client's agreement to the contrary. The lawyer may avail himself of the usual legal remedies where those charges are not paid.

Since the Committee's opinion relative to your first question is dispositive of the matter, consideration of your second question was not reached by the Committee.

To the extent that this opinion conflicts with LE Op. 431, the Committee is thus overruling the earlier opinion.

Committee Opinion
November 16, 1988