

Committee Opinion
June 8, 1988

LEGAL ETHICS OPINION 1088

ATTORNEY/CLIENT – MISSING
CLIENT – STATUTE OF LIMITATIONS.

The facts of your letter are incorporated in this letter for the sake of brevity.

In April, 1987, I had an appointment with a potential client at my office regarding a personal injury claim arising out of a motor vehicle accident on June 26, 1986. Following up on that conference, I sent the potential client a letter confirming my willingness to represent him, the scope of my representation, the fee and his obligation regarding the out-of-pocket expenses. We asked this potential client, as we do all potential clients, to indicate his agreement with those terms by signing a copy of that letter and returning it to us. This particular client did so, but not until July, 1987.

At that time, we began work on the case by compiling the necessary information regarding the accident itself and the nature and extent of the client's injuries and treatment. In February of 1988, I wrote to the client and asked him to make an appointment to meet with me to discuss the case. When the client did not respond in approximately two months, I again wrote to him on April 11, 1988, again asking that he make an appointment to meet with me to discuss the case. In that letter, I did inform him that I was considering withdrawing. That letter was sent certified mail, return receipt requested, to the address we had in the file and we did receive back the delivery receipt signed by a member of his family. The client did not respond and I again wrote to him notifying him that I was withdrawing as his counsel, advising him of the statute of limitations and that he was free to retain any other attorney of his choice to handle the matter. I sent duplicate letters by both certified mail, return receipt requested, and first class mail. The original letter which was sent certified mail was returned unclaimed. The letter sent by first class mail has not been returned by the postal system. At the time notification of our withdrawal was sent to the client, we did notify the insurance company of our withdrawal and asserted a lien for attorney's fees and costs and also notified the various medical providers that we were no longer representing this client.

Basically, you advise that you have been unsuccessful in attempting to contact a client.

The Committee refers you to LE Op. 841 and LE Op. 872.

Disciplinary Rule 2-108(B)(1) states that except as stated in Paragraph C, a lawyer may withdraw from representing a client if withdrawal can be effected without material prejudice to the client. Because the statute of limitations will run in the latter part of June, based upon the above cited legal ethics opinions and DR:2-108(C)(3), the Committee opines that you should file suit to prevent the statute of limitations from running and from prejudicing your client. The Committee opines that it would not be improper for you to file suit to prevent the statute of limitations from running and contemporaneously file a motion for withdrawal. The Committee does not believe that you may simply close your file at this time, without preserving the statute of limitations.

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