

Committee Opinion
April 7, 1988

LEGAL ETHICS OPINION 1117

FEE: FILING LAWSUIT FOR UNPAID
FEES WHILE REPRESENTING THE
CLIENT.

You advise that a lawyer is retained to represent a client in a felony criminal matter before a circuit court. The client and another person enter into a retainer contract with the lawyer providing for the representation by the lawyer in the criminal matter at a set fee. During the course of the lawyer's representation of the client, the client and the other obligated party fail to meet the contractual obligation regarding payment of the lawyer's fee. While continuing representation of the client, the lawyer files a warrant in debt against the client and the other obligor before the general district court of a jurisdiction other than the circuit court hearing the criminal matter.

You wish to know whether this action by the lawyer violated DR:5-101(A) or any other disciplinary rule.

Disciplinary Rule 5-101(A) states that "A lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client may be affected by his own financial, business, property, or personal interest, except with the consent of his client after full and adequate disclosure under the circumstances." The Committee does not believe that this disciplinary rule is applicable because the lawyer was already employed by the client when the issue arose.

The Committee refers you to LE Op. 974. In that opinion, the Committee addressed the question of whether a firm may sue a client for fees owed in a divorce matter while remaining as counsel of record during the appeal of a collateral matter. The Committee stated that Ethical Consideration 2-25 [EC:2-25] states, "A lawyer shall be zealous in his efforts to avoid controversy and should attempt to resolve amicably any differences on the subject. He should not sue a client for a fee unless necessary to prevent gross fraud or gross imposition by the client." The Committee opined in LE Op. 974 that it did not appear from the facts in the inquiry letter that fraud existed. However, the Committee did find that a question existed as to whether or not the client had created a gross imposition upon the lawyer. The Committee opined that, if the court granted the attorney's request to withdraw as counsel in the appeal (which the attorney had already initiated) and if the attorney concluded that a gross imposition upon his practice had resulted from the client's conduct, then it was not improper for the attorney to file a suit for his fees during the pendency of the appeal.

In this inquiry, there were insufficient facts to determine if fraud was an issue or if the client had created a gross imposition upon the attorney.

There is no disciplinary rule on point. However, the Committee believes that EC:2-25 and LE Op. 974 support the theory that unless fraud or gross imposition are established, it would not be proper to sue the client for unpaid fees while representing the client.

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The Committee also directs you to DR:7-101(A)(3), which states that “A lawyer shall not intentionally . . . prejudice or damage his client during the course of the professional relationship, except as required under DR:4-101(D).”

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