

Committee Opinion
January 4, 1989

LEGAL ETHICS OPINION 1187

TRUST ACCOUNT: DEDUCTING THE
AMOUNT OWED TO THE LAW FIRM
FROM THE DISBURSEMENT DUE THE
CLIENT.

You wish to know whether, at the time of settlement and receipt of funds for a contingency case, the law firm may deduct from the disbursement due to the client the fees owed to the law firm by the client for previously rendered and invoiced services without the client's agreement, but upon disclosure to the client. For purposes of this opinion, the Committee will assume that the client has received the invoice and is not disputing the firm's fees for previous professional services.

Disciplinary Rule 9-102(A)(2) [DR:9-102] and 9-102(B)(1) and (3) are the appropriate and controlling rules in this situation. Disciplinary Rule 9-102(A)(2) provides that funds belonging in part to a client and in part, presently or potentially, to the lawyer or law firm must be deposited in a lawyer's trust account, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved. Disciplinary Rule 9-102(B)(1) and (3) provide that the lawyer also maintain complete records of all funds of a client coming into the possession of the lawyer and render appropriate accounts of the same to the client. The Committee has previously opined in LE Op. 734 that an attorney may apply the proceeds of a client's check toward legal fees owed by the client to the attorney; however, the Committee did state that the attorney must also satisfy the requirements of DR:9-102(B)(1) and (3) by sending to the client's last known address a notice and an accounting of the receipt of the check and the intended application of the proceeds toward the client's financial obligation to the attorney.

The committee opines that since the client has been invoiced for the services rendered and has not disputed the amount due, then upon sending the notices required by DR:9-102(B)(1) and (3) outlined above, it would not be improper for the law firm to deduct from the disbursement due the client at the time of settlement the fees owed to the law firm.

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