

Committee Opinion  
September 21, 1989

LEGAL ETHICS OPINION 1280

FEES – TRUST ACCOUNTS: FORMER  
ATTORNEY'S FEES WHICH THE  
CLIENT DISPUTES.

You indicate that, prior to retaining you as counsel, your client and her husband had retained another attorney. After they discharged the first attorney and retained you, the first attorney notified you of a lien for \$375 which he claimed was the value of his services. As far as you know, he never notified the defendant's insurance company of his lien, and the settlement check was made payable to you and your client only. You have now disbursed the proceeds to your client while withholding \$375 in your trust account pending this Committee's determination of the appropriate conduct under your professional obligations.

You are uncertain of your duty to the attorney, if any, and how you can reconcile that with your duty to represent your client by avoiding having her pay debts for which she may not be liable. You have requested that the Committee opine on whether you are obligated to either notify the attorney that the proceeds have been received and/or pay the attorney, and, if so, what sum should be paid to the attorney.

The applicable Disciplinary Rules are DR:9-102(A)(2), which provides that the portion of funds in a lawyer's trust account which may belong in part to the lawyer and which are in dispute shall not be withdrawn until the dispute is finally resolved, and DR:9-102(B)(4) which requires that a lawyer shall promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive. (emphasis added)

The Committee is of the opinion that by retaining the funds in your trust account until the dispute is resolved, you have met the ethical obligation. The questions you raise as to the possibly improper notice and the rightful owner of those funds are legal issues dealing with the interpretation and application of § 54.1-3932 of the Code of Virginia which addresses an attorney's lien for fees. The resolution of that question is beyond the purview of this Committee and properly rests with a finder of fact.

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