

Committee Opinion
December 14, 1992

LEGAL ETHICS OPINION 1503

ASSERTING POSSESSORY LIEN FOR
FEES OVER PROPERTY ENTRUSTED
TO ATTORNEY AS CUSTODIAN.

You have advised that Client first engaged law firm to represent him in (1) his attempts to "work out" his mounting debt, and (2) to obtain a no-fault divorce from his wife. Client later decided to file a fault-based divorce action, which was highly contested by his wife. After the divorce action was filed by Client, Client's wife removed from Client's home personal property valued at approximately \$9,000. Client asserted to the law firm that the property which the wife removed was his separate property and that he had a previous divorce decree which awarded it to him as his separate property.

You further indicate that the wife and her attorney agreed to deliver the personal property to Client's attorney to hold in trust until a neutral third party custodian could be appointed. A motion was then filed by the law firm asking the court to appoint a third party custodian. Client agreed that the attorney could be custodian of his property until a third party custodian was appointed.

After some time, the wife advised Client's attorney and law firm that the property could be returned to her but not to Client. Client then requested that the property be returned to him and discharged the attorney before the case could be resolved. At the time of discharge, Client owed attorney and his law firm \$4,000-\$5,000 on his account. You advise that, despite the fact that Client initially consulted with the attorney for a debt "work out", Client always advised the law firm that he would be able to pay the fees which were being incurred to prosecute and defend the divorce action.

Subsequently, the court in which the divorce action was pending entered an order granting the law firm leave to withdraw as counsel of record. The law firm wrote to Client and advised Client that it was asserting an attorneys' lien against the property which was in its possession until such time as the Client made some arrangement for the outstanding bill.

You have asked the Committee to opine whether, under the facts of the inquiry, the law firm may ethically assert an attorney's lien over the Client's personal property which is in the law firm's possession until such time as the Client agrees to provide other security for the fees which the Client has incurred with the law firm.

The Committee has considered your inquiry and determined that, since the law firm is holding the Client's personal property as trustee, the question raises a legal issue the resolution of which requires a factual determination beyond the Committee's purview.