

Committee Opinion
February 8, 1994

LEGAL ETHICS OPINION 1562

FEES: ARBITRATION OF FEE DISPUTE;
DUTY TO REPORT MISCONDUCT.

You have presented a hypothetical situation in which a local bar association operates a Fee Arbitration Committee which hears fee disputes between attorneys and clients with the consent of both parties. As part of the process, Committee members take telephone calls from the public and, if the caller requests, he/she is sent an application for fee arbitration.

You indicate that a client calls a member of the Fee Arbitration Committee and reports the following conduct of an unnamed attorney:

Client received a "Final Bill" from the attorney. Upon review of the bill, Client noticed that a \$700.00 payment was not credited to her account. Client sent a copy of her \$700.00 check and subsequently received a "Revised Final Bill" crediting her account with the \$700.00 payment, but revising and adding other charges so that the amount due remained the same. Client then called attorney on several occasions but was unable to speak to him. The attorney's secretary insisted that the client pay the revised bill.

Client made monthly payments on the bill but was charged for the preparation of the bill at the attorney's hourly rate of \$150.00 per hour. Client has objected to the charges, but the secretary has said that it is a normal charge.

There is no written fee agreement. To the best of the client's recollection, the only agreement was to pay \$150.00 per hour to process a divorce.

You have asked the committee to opine whether, under the facts of the inquiry, (1) if the above attorney consents to fee arbitration, is it reasonable to assume that his [honesty, trustworthiness, or] /1 fitness should not be challenged; (2) if the attorney adequately explains his fees to the Committee as a part of arbitration and if the fees are reasonable, does that satisfy the attorney's requirements under DRs 2-105(A) and (B); (3) what, if anything, should be reported by the Committee to the bar as an ethical violation; and (4) if the Committee (or members who know about the case) fail to report the misconduct, are they in violation of DR:1-103(A).

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:1-103(A) which states in pertinent part that a lawyer having information indicating that another lawyer has committed a violation of the Disciplinary Rules that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness to practice law in other respects shall report such information to the appropriate professional authority; DR:2-105(A) which states that a lawyer's fees shall be reasonable and adequately explained to the client; and DR:2-105(B) which provides that the basis or rate of a lawyer's fee shall be furnished on request of the lawyer's client.

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The committee responds relative to your inquiries as follows.

As to your first inquiry, the committee is of the opinion that if members of the Fee Arbitration Committee conclude, based upon a substantial degree of certainty, that a lawyer has committed a violation of the Disciplinary Rules, the fact that the lawyer has agreed to submit to fee arbitration would not in and of itself justify the members of the Fee Arbitration Committee in concluding that the violation fails to raise substantial questions as to that lawyer's honesty, trustworthiness, or fitness to practice law. Conversely, the committee is of the further opinion that the attorney's refusal to participate in the arbitration process would not in and of itself raise a substantial question as to the lawyer's honesty, trustworthiness, or fitness to practice law.

Regarding your second inquiry, the committee is of the opinion that an adequate explanation by the attorney of his fees to the Fee Arbitration Committee would not satisfy the requirement of DR:2-105(A) that the attorney provide an adequate explanation of the fees to the client. Ethical Consideration 2-21 [EC:2-21] provides helpful guidance: "As soon as feasible after a lawyer has been employed, it is desirable that he reach a clear agreement with his client as to the basis of the fee charges to be made." This committee is without sufficient facts to determine whether or not there has been a violation of the requirement set forth in DR:2-105(B), i.e., whether the basis or rate of a lawyer's fee was furnished on request of the lawyer's client.

As to your third inquiry, the committee is of the opinion that if the members of the Fee Arbitration Committee conclude, based upon a substantial degree of certainty, that misconduct has occurred which raises a substantial question as to the attorney's honesty, trustworthiness, or fitness to practice law in other respects, the chair of the committee and its members are required by DR:1-103(A) to report, without unreasonable delay, such misconduct to the Virginia State Bar. See LE Op. 1338, LE Op. 1528, LE Op. 1545.

Finally, as to your fourth inquiry, the committee is of the opinion that failure of the Fee Arbitration Committee chair or committee members (who know about the case) to report the attorney's misconduct, without unnecessary delay, would be improper and violative of DR:1-103(A).

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Legal Ethics Committee Notes. – If information about the ethics violation is a client confidence, a lawyer may report the other lawyer's misconduct only if the client consents under Rule 1.6(c)(3); the lawyer considering whether to report must consult with the client under that Rule.