

Committee Opinion
November 29, 1994

LEGAL ETHICS OPINION 1620

ATTORNEY'S LIEN; FEES; PROPRIETY
OF ATTORNEY WAITING FOR
SETTLEMENT OR VERDICT BEFORE
DETERMINING AMOUNT OF
ATTORNEY'S FEES SECURED BY LIEN;
QUANTUM MERUIT.

You have presented a hypothetical situation in which an attorney ("Attorney") was retained to represent a client ("Client") in a claim for personal injuries arising from an automobile accident. You indicate that Attorney diligently prosecuted the claim for approximately two and one-half years, when the Attorney received a telephone call from client's husband advising that new counsel had been retained because Client and husband had a difference of opinion with attorney about value of Client's claim. There was no allegation that Attorney was being discharged for cause. Further, Attorney was instructed to turn over the complete file to the new counsel, which was accomplished within one week of the request.

You further indicate that Attorney asserted a lien for attorneys' fees under § 54.1-3932 of the Code of Virginia on a "quantum meruit" basis. Client, Attorney, and new attorney agree that [former] Attorney is entitled to a fee based on "quantum meruit".

Finally, you indicate that approximately four months prior to trial, Client is demanding that [former] Attorney immediately inform Client of the exact amount of attorneys' fees owed.

You have asked the committee to opine whether, under the facts of the inquiry, it is proper for Attorney to wait until there is a settlement or verdict in the case before determining the amount of the attorneys' fees secured by the lien.

The ethical duty of a lawyer, whose services are on-going or have been terminated, is to furnish on request of the client "[t]he basis or rate of [the lawyer's] fee." DR:2-105(B). All fees must be "reasonable and adequately explained. ... " DR:2-105(A). Ethical Consideration 2-20 [EC:2-20] sets forth illustrative factors with respect to the reasonableness of fees and, correspondingly, the basis or rate used in arriving at the quantum of fees charged.

Hence the committee is of the opinion that the lawyer has a duty to furnish the former client with the "basis or rate" of fees sought for representation in the matter. Since the lawyer's services have been terminated in the on-going matter, the time at which the lawyer must furnish the quantum of fees, as opposed to the "basis or rate" presents a legal issue beyond the Committee's purview. /1

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