

Committee Opinion  
October 9, 1987

LEGAL ETHICS OPINION 974

ATTORNEY/CLIENT – WITHDRAWAL  
AS ATTORNEY-NONPAYMENT OF  
FEES.

A lawyer represented a client in a divorce case. After depositions and hearings took place, the client ceased communications with the lawyer's office and failed to appear at any further court hearings. The lawyer scheduled a hearing to withdraw as counsel, but the court refused to allow the lawyer to do so because he was unable to serve notice on his client. A final decree resulting in judgment against the client for spousal support arrearages and a monetary award in the divorce matter was entered in the circuit court. Earlier in the divorce matter, however, a property issue relative to the marriage arose from a ruling by the court which formed the basis for an appeal to the Supreme Court of Virginia.

A writ was granted and briefs filed, although oral argument was not yet scheduled. Again, no communication was received by the lawyer from the client. Cooperation of the client was not necessary to effectively prosecute the appeal. The client also owed the lawyer a substantial amount of legal fees which it appeared would not be paid voluntarily.

It is not improper, given the above, for the lawyer to move to withdraw since the client has failed to fulfill his obligations relative to the fee. Whether or not the lawyer may actually withdraw is a matter to be decided by the court. [ DR:2-108(B)(3); DR:2-108(C)]

It is improper, should the lawyer not be allowed to withdraw, for the attorney to refrain from further participation in the appeal so that it may be dismissed. [ DR:6-101(B)]

It is not improper, should it be determined that a gross imposition has been made upon the lawyer's practice due to the client's failure to pay the fee, for the lawyer to file a suit for his fees during the pendency of the appeal if the attorney is granted permission to withdraw as counsel. [ EC:2-25]

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