

You represented the husband in a divorce proceeding. The client signed a retainer letter which outlined a fee arrangement of \$100 per hour and a \$500 retainer. Further, the client agreed to pay \$250 per month until the total amount owed was paid. Following trial and during the pendency of a post-trial motion, your client discharged you and retained other counsel. At the time you were discharged, some \$8,000 in fees were owed and the client orally promised to continue to pay \$250 per month. Subsequent to this promise, client has reduced his payments to \$100 per month and asked you to consider a reduction in the amount of fees owed.

1. Your first inquiry is whether it would be unethical to sue for the fee. There is no Disciplinary Rule that directly prohibits such action. Ethical Consideration 2-25 advises that "A lawyer should be zealous in his efforts to avoid controversies over fees with clients and should attempt to resolve amicably any differences on the subject. He should not sue a client for a fee unless necessary to prevent fraud or gross imposition by the client." The Ethical Considerations are designed as guidance to members of the bar, and unlike the Disciplinary Rules, which are mandatory in character, "the Ethical Considerations are aspirational in character and represent the objectives toward which every member of the profession should strive." (See Preamble, Virginia Code of Professional Responsibility.)

The Committee opines that there is no Disciplinary Rule that would ethically prohibit you from bringing an action against your client for \$8,000 past due attorney's fees.

2. Your next question is whether it would be ethical to correspond with your client's commanding officer (you advise that your client is an army officer) and ask that the client be counseled about this matter.

Disciplinary Rule 4-101 prohibits the revealing of confidences and secrets of clients. Although DR:4-101(C) (4) allows the revealing of confidences and secrets necessary to establish the reasonableness of a lawyer's fee, unless the reasonableness of the fee is at issue and unless the commanding officer is in a position to resolve that issue, this exception to DR:4-101 does not apply.

The Committee opines that it would not be ethical for you to contact your client's commanding officer.

3. Your final question is if such a letter to the client's commanding officer is permissible, can you advise the commanding officer about the background of the dispute. Again, DR:4-101 is controlling. It is improper to write to the commanding officer regarding this issue, and also improper to advise the commanding officer of the background of the dispute.

Committee Opinion
November 12, 1987

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