

Committee Opinion
November 13, 1987

LEGAL ETHICS OPINION 996

ATTORNEY/CLIENT – NONPAYMENT
OF FEES.

An attorney was retained by a client regarding a breach of contract claim relative to the sale and purchase of a residential property. A fee arrangement was executed. Attorney's client, the seller, in the particular transaction in dispute, wished to pursue a cause of action against a contract purchaser who failed to consummate settlement. Negotiation efforts to settle the dispute were made, but were unsuccessful. A lawsuit was filed on behalf of the attorney's client. Shortly after the filing of the lawsuit, the settlement offer was communicated to the attorney by defense counsel. The client, however, rejected this offer. The client believed his damages to be far greater than the settlement offer. The attorney discussed with the client his reluctance to proceed with trial because of the difficulty in obtaining a greater net recovery.

The attorney strongly advised the client to consider the cost and fees associated with litigation. The attorney and client discussed the possibility of attorney's fees offsetting his recovery. The attorney and client also discussed the risk of trial and the possibility of not proceeding and retaining judgment. The client stated that he understood the risks, but wished to proceed by pursuing resolution of the lawsuit by a trial. Trial took place and judgment against the defendant was obtained. Subsequently, \$2,500 was collected from the defendant, in the form of two checks made payable to the attorney and to the client. The outstanding attorney's fees were \$3,040.35, less the \$600 professional adjustment. The account receivable has been delinquent for over 90 days. The attorney has not disbursed payment to his client, nor has he received a demand to do so. However, the attorney has been requested to reduce the fee by 50 percent. The partners in the firm have denied this request in light of the fact that a professional courtesy adjustment has already been made to the client.

It is not improper, given the above, for the firm to maintain a lien to secure payment of fees provided that the client has refused to pay the firm's fees. The Committee notes that while DR:9-102(B)(1) provides that a lawyer shall promptly notify a client of the receipt of his funds, securities or other properties, notification does not appear to always mandate subsequent payment of the same. The Committee refers to DR:9-102(A)(2). The committee does caution, however, that the right of the lien may prove less deleterious to the already difficult relationship with the client in light of EC:2-25.
[DR:5-103(A)(1), DR:9-102(B)(1); EC:2-25; see also LE Op. 995]

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