NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinions

Opinion #224 - 1/26/72 (42-71)

Topic: Deduction of Legal Fees From Bail of Money

Overruled, in part, by 567

Digest: Whether an attorney may deduct his fees from bail money is a question of law

Code*: DR 9-102(B)

QUESTIONS

1. When a client has deposited bail money in court, and the clerk of the court has returned the money to the attorney, may the attorney, in the absence of agreement with the client deduct his fees before remitting the bail money to the client?

2. If bail money is deposited for the client by a third party and returned to the attorney, may the attorney deduct his fees before remitting the bail money to the third party?

OPINION

1. The remedies of an attorney in respect to the method of payment of legal fees are a matter of law. ABA 63 (1932); N.Y. City 291 (1933). Whether or not an attorney may deduct the amount of his fee from bail money deposited by his client and if he may, the extent of such right are questions of law upon which the Committee does not pass. If the attorney has no such right, he should after placing the money in his special account, promptly remit the bail money to his client. DR 9-102 (B)(4). If the attorney has such a right but there is a dispute with the client with respect thereto or as to the amount of the fee, the lawyer should promptly advise the client thereof and take prompt steps to secure a judicial determination of the dispute. DR 9-102(B).

2. Money advanced by a third party does not belong to the client and the client has no right to it. The attorney can have no greater right than the client, and it would be improper to deduct any fees from this money. Accordingly, in the absence of an agreement with the third party, the lawyer may not retain any portion of the third party's bail money.

Opinion #225 - 1/26/72 (58-71)

Topic: Fees

Digest: Attorney for judgment creditor may charge judgment debtor reasonable fee for preparation of satisfaction of judgment.

Code*: EC 5-19

QUESTION

May the attorney for a judgment creditor charge the judgment debtor for the preparation of a satisfaction of judgment?

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OPINION

It is not ethically improper for an attorney representing a judgment creditor to charge the judgment debtor a reasonable fee for services in preparing a satisfaction of judgment provided that such preparation is not required by law. cf. CPLR 5020 which requires that the judgment creditor or his attorney execute and deliver a satisfaction piece upon payment of the judgment. An attorney may, of course, charge his client, the judgment creditor, a fee for the preparation of the instrument and need not look to the judgment debtor. It would appear that no question of conflict of interest is involved. EC 5-19.

In the event the judgment debtor prepares the instrument there, of course, may be no charge therefor made by the creditor's attorney.

Opinion #226 - 1/26/72 (59-71)

Topic: Conflict of Interest. Public Officers.

Digest: City Councilman not barred from practicing in Police Court or City Court.

Code*: DR 5-101; DR 5-105(A); DR 8-101 (A)(2); EC 5-15.

QUESTION

Is it proper for an elected member of a city council to practice law in the Police Court and City Court of his city notwithstanding that the salaries of the judges of those courts are set by the city council?

OPINION

DR 8-101(A) provides:

> "A lawyer who holds public office shall not...use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or of a client."

However, the mere possibility that a judge may be influenced by the lure or fear of a councilman's vote on the salaries of judges of his court does not pose so evident a threat to the impartial administration of justice as to warrant barring the councilman from practicing law in his court, assuming that the city council does not appoint the members of the court.

In a case where a client and the municipality or one of its agencies are the contesting parties, or the validity of a city ordinance is in question, a conflict of interest would exist, for then it would be the duty of the lawyer to contend for the best result for his client and at the same time as a member of the city council, to do his utmost to protect the interests of the city. In such case, as well as appearance before an administrative agency of the city, the councilman would be disqualified from representing the private client. DR 5-101; DR 5-105(A); EC 5-15. See N.Y. State 141 (1970) and N.Y. State 110 (1969). To a lesser extent there may be a conflict in Police Court matters, but this will depend on the facts of each case. In ABA Inf. 1126 (1969) it was stated: