



Committee on Professional Ethics

Opinion #383 - 4/17/75 (14-75)

Topic: Obligation of plaintiff's successor lawyer to notify the predecessor lawyer of settlement of claim.

Digest: In the absence of a statutory lien, a successor lawyer has no duty or right, without the consent of the client, to give notice of a settlement to the discharged lawyer formerly handling the claim.

Code: EC 2-30

QUESTION

In the absence of a statutory lien, does a plaintiff's successor lawyer have an obligation to notify his predecessor lawyer of the settlement of a claim the predecessor was handling.

OPINION

A client has the right at all times to be represented by counsel of his own selection, which includes the right to change counsel whenever he so desires. ABA 10 (1926); ABA 130 (1935); ABA Inf. 834 (1965):

"A lawyer may properly accept employment to handle a matter which has been previously handled by another lawyer, provided that the other lawyer has been given notice by the client that his employment has been terminated. The lawyer originally engaged has his remedy at law for any breach of contract that may occur through the client's termination of his employment..."

The new lawyer may not take charge of the case until satisfied that the former lawyer has been discharged by the client, Drinker, Legal Ethics 199 (1953), but when this has been done and he accepts the retainer, he then owes the customary duty of undivided loyalty to the client.

While the traditions of the legal profession call upon members of the bar to deal fairly with each other, the superseding lawyer is not responsible for the fees due the superseded lawyer. Drinker, Legal Ethics 200 (1953). Neither is he obliged, against the wishes of his client, to assist the superseded lawyer in the collection of the latter's fee, and he would be acting adversely to the interests of his client if he were to do so. Maru, Digest of Ethics Opinions 59 (1970) [L.A. 426 (1951)]; Maru, supra. 105 [3 Advocate 7, No. 848 (1960)]; Maru 393 [Cleveland 3560 (1951)].

At the time the new lawyer is consulted by the client, if he believes the client is unfairly seeking to avoid payment of fees to the superseded lawyer, he may require that those fees be paid and may refuse the retainer if they are not. He may and should use his good offices at any time to urge the client to pay a proper charge. But his only obligation is to see that the superseded lawyer, at the time of his discharge, has such notice that he has been retained as will enable the latter to protect his rights, EC 2-30, Maru, Digest of Ethics Opinions 105, supra; p. 413 [Okla 3764 (1952)]; p. 393, supra, and he may not, without his client's consent, subsequently convey privileged information concerning a settlement any more than any other privileged information coming to his knowledge.
