
E-75-16 Excess judgment amount held for one client applied to second client's claim

Facts

May an attorney for two creditors of a particular debtor properly apply funds, which the attorney holds in his trust account, to the claim of one of his creditor-clients, when such funds are held in trust by the attorney under the following circumstances: The claim of one of the creditors, an insurance company, against the debtor is reduced to judgment and the judgment is collected in full? After the judgment is collected, but before the attorney accounts to the insurance company, the insurance company conducts an audit, concludes that it overcharged debtor, and that the judgment is approximately \$200 more than it should have been. The attorney then remits to the insurance company creditor the full amount claimed by the insurance company which equals the amount of the judgment less the overcharge of approximately \$200. The attorney represents a second creditor of the same debtor whose claim is not reduced to the judgment, whose claim has not been disputed by the debtor, and whose claim exceeds the sum of the approximately \$200 held in trust by the attorney. Although the second creditor's claim is not disputed by debtor, debtor objects to the sum of approximately \$200 being applied to the second creditor's claim.

Opinion

Upon consideration of Disciplinary Rule 5-106, relating to settling similar claims of clients and Disciplinary Rule 9-102, relating to proper handling of trust funds of clients, it is the opinion of the Professional Ethics Committee that the proposed payment of the \$200 which is being held as a result of an over-collection from a judgment debtor, where such debtor strongly objects to such proposed payment of the funds, would be improper. The committee further believes that this would violate the lawyer's normal fiduciary responsibility to clients and to others who have entrusted funds to an attorney.