
E-83-7 Applying client's funds against fees owed

Question

May a law firm withhold a client's share of a settlement fund in order to apply it against the general indebtedness of the client to the firm?

Answer

No.

Opinion

Your question relates to law firm Y which has had professional dealings with corporation X since 1979. Firm Y was organized as a service corporation from 1979 to 1981 and since 1981 has been organized as a partnership. Client X is indebted to the old service corporation in the amount of \$17,500 and to the partnership in the amount of \$8,000. Client X has written firm Y acknowledging the indebtedness and notifying the firm that it does not anticipate making any large reduction in the amounts due until client X receives some settlements. Law firm Y no longer represents client X in any matter, although, before terminating their representation of client X, the firm settled a contingent fee collection case with the client's approval. Under the contingent fee contract, the client would receive two-thirds of the settlement amount.

In such a situation, an attorney may be able to acquire a common law lien for his or her fees as noted in a previous opinion of the Professional Ethics Committee, E-80-8. *See* 53 Wis. Bar Bull. 36 (August 1980). However, the lien is limited to payment for services rendered in that particular action, and does not extend to cover legal fees in another case or claims of the attorney against the client unless the client otherwise agrees. *Freyer v. Mutual Benefit Health and Accident Assoc.*, 45 Wis. 2d 106, 172 N.W.2d 338 (1969).

In the present case the committee assumes the settlement proceeds, since they constitute funds belonging in part to a client and in part presently or potentially to the lawyer, were deposited in a client's account separate from the law firm's funds. That portion of the settlement funds due the law firm may be

withdrawn by the firm when due unless disputed by the client, in which event the disputed amount may not be withdrawn until the dispute is resolved. SCR 20.50(1)(b), State Bar Memo Opinion 10/75. However, you should be aware that Supreme Court Rule 20.50(2)(d) requires an attorney to promptly pay or deliver to the client, as requested by the client, the funds in possession of the lawyer which the client is entitled to receive.

The committee further assumes that client X does not dispute firm Y's fee for the services rendered in settlement of the contingent fee matter. Therefore, the firm may withdraw its fee from the funds on deposit but, since the client refuses to apply its share of the settlement proceeds against the general indebtedness due the service corporation and partnership, the firm may not retain the funds to which the client is entitled.