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**E-85-13 Attorneys' fees in divorce actions: Fee collection practices and agreements**

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**Questions**

1. Is it ethically permissible to make arrangements with a potential divorce client that states that the attorney will not file the final papers until payment is received for services?
2. If the answer to (1) is "no" or not an unequivocal "yes" what ethical alternatives for getting paid, short of suing your client, are available?

**Opinion**

1. It would be ethically *impermissible* for an attorney to enter into an agreement with a potential or current divorce client which stipulated that the attorney would not file the final divorce papers with the court until his or her fees were paid. *See* SCR 20.35(1)(b) and SCR 40.13. However, under such circumstances and with disclosure to the client of the potential consequences, a lawyer and client may acknowledge in their agreement that the lawyer may seek the court's permission to withdraw from the representation if (a) the clear terms of the fee arrangement are breached by the client [SCR 20.16(3)(a)6] or (b) if other good cause exists [*e.g.*, SCR 20.16, 20.25 and 20.28]. Note: Your attention is called to section 805.17(2) of Wis. Stat., regarding possible time limitation on filing of final documents.

2. Regarding ethical alternatives to suing your client for lawyer's fees, we would refer you generally to, for example, SCR 20.06(6)(c), *Disciplinary Proceedings Against Kinast*, 121 Wis. 2d 25, 33, sec. 57 N.W.2d 282 (1984), State Bar Ethics Opinion E-80-8 and ABA Committee on Ethics and Professional Responsibility Informal Ethics Op. 1461 (1980). Those authorities may be briefly paraphrased as follows:

a. At the inception of the lawyer/client relationship clarify in writing:

(1) The estimated total projected fees and costs to be paid by the client and/or the basis for computing the client's future liability for them.

- (2) The manner and timing of payment of fees and costs; and
- (3) The client's representations regarding his/her capacity to pay the projected fees and costs in the manner and at the times contemplated in the agreement.
  - b. If a client with the ability to pay deliberately disregards the terms of such a written fee agreement, the lawyer's options would include, for example:
    - (1) Completing the representation and, upon its conclusion, pursuing his/her remedies at law;
    - (2) Seeking an award of attorney's fees in the divorce action itself (e.g., Wis. Stat. section 767.262); or
    - (3) Seeking leave of the court to withdraw from the representation [SCR 20.16(3)(a)(6)] and separate judgment for fees and disbursements [Wis. Stat. section 767.23(3) and SCR 11.02(3)].

For further information, *see*, for example, "How to Set and Collect Fees in Divorce Cases," ATS-CLE Division, State Bar of Wisconsin (March 1983), concerning the contents of which the committee expresses no opinion.