

LOS ANGELES COUNTY BAR ASSOCIATION  
PROFESSIONAL RESPONSIBILITY AND ETHICS COMMITTEE

**OPINION No. 476**

**SUMMARY**

**ATTORNEY/CLIENT--SCOPE OF REPRESENTATION**

An attorney's duty to represent a client extends only to those services for which the attorney has been retained. However, once the services set forth in the contract have been performed, the attorney should not withdraw from further representation unless no prejudice will result to the client and, if required, until prior court authorization is obtained.

**CONFLICTS OF INTEREST--MAY AN ATTORNEY CONTINUE TO REPRESENT A CLIENT WHERE A FEE DISPUTE HAS ARISEN?**

Once a dispute has arisen between an attorney and a client as to fees, the attorney should take no action adverse to the client prior to withdrawing from representation with the client's approval, or with permission of the tribunal before which the matter is pending. Additionally, the attorney should not proceed against a client to collect unpaid fees until after representation has terminated.

**FACTS AND ISSUES**

An attorney has represented a wife in a marital dissolution proceeding in which the written retainer agreement expressly provides that the "attorney's services will include prosecuting the case through trial and post-trial motions. Attorney's services will not include (i) appeals or other actions for relief in an appellate court or (ii) execution on any judgment obtained."

The attorney performed the services set forth in the retainer agreement, through settlement at the trial level. Opposing counsel failed to prepare a judgment in accordance with the terms of the settlement, despite having been ordered by the court to do so. The client will not authorize the attorney to prepare the judgment, unless he agrees to do so without charging her for the service. Additionally, the client owes an unpaid fee in the approximate amount of \$4,500 for fees previously earned, which she proposes to satisfy by assigning to the attorney her right to collect unpaid spousal support, and also by assigning to the attorney a separate cause of action against the former husband, the value of which is no more than \$2,000.

The attorney does not wish to accept the client's proposals for satisfaction of the unpaid fees, nor does he wish to enter into a business transaction with the client by accepting the proposed assignment of the client's cause of action. He has elected to prepare the judgment so as not to prejudice the client's interests.

The attorney inquires whether he is obligated to continue to represent the client on matters that are expressly outside the parameters of the retainer agreement. The attorney also inquires whether a conflict has been created with his client by virtue of the pending fee dispute.

## **DISCUSSION**

### **1. SCOPE OF REPRESENTATION**

In general, the attorney-client relationship is created by contract. (Neel v. Magana, Olney, Levy, Cathcart & Gelfand (1971) 6 Cal. 3d 176, 181, 98 Cal. Rptr. 837; Kim v. Orellana (1983) 145 Cal. App. 3d 1024, 1028, 193 Cal. Rptr. 827.) It has traditionally been accepted in California that where the formal representation agreement limits the attorney's services to a specific matter, the attorney has no duty to represent the client in an unrelated action or matter. (Sullivan v. Dunne (1926) 196 Cal. 183, 190, 244 P. 343.)

In this inquiry, the attorney's written retainer agreement expressly provides that he is not obligated to execute on any judgment obtained. He has fulfilled the terms of his retainer agreement by representing the client through judgment. Therefore, he is not ethically required to accept the client's offer that he agree to continue representation through collection of the judgment and/or to initiate an action to collect the ancillary debt owed by her ex-husband, regardless of the fee dispute.

However, an attorney is ethically precluded from withdrawing from employment until he or she has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client; allowing time for employment of other counsel; returning the papers, property, and advance fees that the client is entitled to receive; and complying with applicable laws and rules. (See Rule 3-700, Rules of Professional Conduct of the State Bar of California.) In family law matters, the attorney may withdraw from representation after judgment has been entered simply by filing with the court an appropriate notice of withdrawal. (See C.C.P. 285.1.). In other types of proceedings, applicable local rules may provide attorneys with the opportunity to withdraw upon similar notice. On the other hand, in litigation matters, the attorney may be required to seek prior court approval before terminating representation. Pursuant to the provisions of C.C.P. 284, an attorney may be relieved from further representing the client either: (1) on the consent of both the client and the attorney, filed with the clerk or entered in the minutes; or (2) on order following noticed motion to the court for leave to withdraw. (Also see Rule 376, California Rules of Court.)

Assuming the inquiring attorney has properly withdrawn from representation, the attorney is not ethically required to take any further action on behalf of the client. Even so, this Committee believes that in circumstances where a client must act quickly to avoid waiving legal rights in the matter in which the attorney previously represented the client, the attorney should take care to advise the client in writing of the approaching time limitations, and advise the client of the wisdom of seeking substitute counsel.

### **2. CONFLICT ARISING FROM FEE DISPUTE**

Where the attorney has not yet been substituted out of the matter or permitted by a court to withdraw, the attorney should not institute an action against the client for unpaid earned fees. Although the California Rules of Professional Conduct do not address whether an attorney's lawsuit against an existing client for unpaid fees constitutes a conflict of interest, this Committee has previously concluded in Opinion No. 362 that an attorney: "should not sue a client for a fee unless necessary to prevent fraud or gross imposition by the client...[but that] an attorney may properly sue a client for services rendered if he withdraws as attorney for the client" [citing Los Angeles

Opinion No. 109 and ABA Code EC2-23]. This Committee has also previously concluded that an attorney should withdraw from all matters in which representation is being provided to the client prior to commencing litigation for costs or fees. (See LA Opinion No. 212.) It is the opinion of this Committee that the institution of civil action against a current client for unpaid fees constitutes a conflict of interest between the attorney and the client, such that the attorney cannot maintain his or her duty of loyalty to the clients, zealously of representation, and the ethical duty not to prefer his or her own interests over those of the client. Thus, we conclude that it would be improper to sue a client for fees and costs until after all representation of the client has terminated. An attorney who withdraws from representation upon client consent or upon court approval is entitled to enforce his or her claim for fees. The attorney may do so by asserting a lien upon any recovery subsequently obtained by or on behalf of the client. (See Weiss v. Marcus (1975) 51 Cal. App. 3d 590, 598, 124 Cal. Rptr. 590; Wagner v. Sariotti (1943) 56 Cal. App. 2d 693, 133 P. 2d 430; Fracasse v. Brent (1972) 6 Cal. 3d 784, 100 Cal. Rptr. 385.)

Finally, the Committee wishes to emphasize that the right to pursue a civil action against the client for unearned fees once the attorney-client relationship has terminated is not intended as a suggestion that the attorney can refuse to perform services contemplated by the retainer agreement upon a condition precedent that unpaid fees be satisfied. It would be improper for an attorney to refuse to provide services simply because a client is unable to pay, absent court approval to withdraw from further representation.

This opinion is advisory only. The Committee acts on specific questions submitted ex parte and its opinion is based only on such facts as are set forth in the inquiry submitted.