

KENTUCKY BAR ASSOCIATION

Ethics Opinion KBA E-73

Issued: September 1973

Question: May an attorney who accepts a case referred to him by another attorney on a contingent fee basis charge the client a fee for services performed prior to his discharge by the client where the original referring attorney accepts employment in the case?

Answer: Yes.

References: DR 2-110

OPINION

An attorney accepted a referral from another attorney and agreed to undertake the representation on a contingent fee basis. Subsequently, the attorney was discharged by the client, and the original referring attorney then accepted employment in the case. The discharged attorney now inquires as to whether he may ethically charge a fee for services performed prior to his discharge. For purposes of this opinion, we assume that the discharge was without cause. It is further assumed that there was to be no division of fees between the two attorneys involved.

The Committee has not previously considered this question. However, two opinions by the American Bar Association Standing Committee on Ethics are instructive. In ABA Formal Opinion 88 (dated December 2, 1932), it was held proper for an attorney to withdraw from a case and charge the client for services performed where the attorney discovered the client's story was untrue. Later, in ABA Formal Opinion 165 (dated August 23, 1936), it was ruled that an attorney could ethically seek compensation for services rendered to one of several clients who decided to withdraw from pending litigation.

The Committee is persuaded that the same rule applies to the present facts. By his actions the client has here made impossible the realization of any contingent fee by the discharged attorney. Under the facts of this inquiry, the attorney did nothing to merit his replacement. Yet, DR 2-110 is mandatory in its requirement that a discharged attorney withdraw from a case. Thus, the attorney finds himself in a situation where, without fault on his part, he is prevented from bringing to a successful conclusion the representation for which he was employed and upon which his fee was originally made to depend. In such circumstances the Committee sees nothing which would ethically prohibit counsel from making a reasonable charge for the services performed by him. Our conclusion would be the same had the client simply and without cause decided to abandon his litigation.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the

Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). Note that the Rule provides: "Both informal and formal opinions shall be advisory only; however, no attorney shall be disciplined for any professional act on his part performed in compliance with an opinion furnished to him on his petition, provided his petition clearly, fairly, accurately and completely states his contemplated professional act."