

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-179
Issued: March 1978

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question: If an attorney and client have agreed that the attorney shall receive one-third (1/3) of any recovery in a tort matter, either by suit or settlement, but the amount of the settlement is not specified, and the attorney performs services and obtains a settlement which is reasonable to him but is not acceptable to the client and the client dismissed the attorney, may the attorney ethically (a) charge him a fee equal to one-third (1/3) of the settlement”, or (b) collect a fee for the reasonable value of the services rendered?

Answer: (a) No. (b) Yes.

References: DR 2-110 (B)(4), 5-105; EC 5-7; KBA Informal Opinion 33; 7 Am Jur 2d, 219 to 231; Gordon v. Morrow, 218 S.W. 258 (Ky. 1920); Commonwealth v. Sizemore, 108 S.W.2d 733 (Ky. 1937); 124 ALR 725

OPINION

The facts presented involve a question of law whether the attorney had, in fact, a cause of action, for the recovery of attorney’s fees. However, inasmuch as the question of the proper procedure to be followed in order to protect recovery of attorney’s fees which may have accrued involves an ethical consideration, we think it is appropriate that this Committee address itself to the problem at hand. A discussion of attorney’s rights to compensation is contained in 7 Am Jur 2d, 219 to 231. *See also*, Gordon v. Morrow, 218 S.W. 258 (Ky. 1920) and Commonwealth v. Sizemore, 108 S.W.2d 733 (Ky. 1937) and 124 ALR 725.

It is important to recognize in an examination of the facts of this matter that a “settlement” was not reached inasmuch as the written conditions of the employment did not state the amount which would be acceptable to the client in the settlement of his claim prior to trial, and he did not accept the amount which was offered to the attorney. Had the conditions of employment authorized the attorney to settle the claim for two thousand five hundred dollars (\$2,500.00), we feel that without question, the attorney would have right to recover. Fees contingent upon the result of litigation or settlements in lieu of litigation are permissible in civil cases because this provides a means of obtaining services of attorneys which might not be possible otherwise (EC 5-7). However, it would appear from the facts which are presented that no settlement was ever reached,

and no matter how fair the offer of the adverse party may appear to the attorney, he is not authorized by his client to effect a settlement based on that offer.

It is not clear whether the attorney, upon advising the client that he felt that the offer was fair, did, in effect, remove himself from the further pursuit of the claim. From his statement of fact, we assume that he did not, and that the client advised him that he no longer required his services even though the attorney stood ready to continue in the trial. If this is correct, and if it would appear that the attorney had not in any way jeopardized the claim of his client through his efforts to reach a settlement and had continued to perform services on behalf of the client until he was dismissed by him, the attorney should follow the procedure set out in DR 2-110(B)(4): "... and a lawyer representing a client in other matters shall withdraw from employment, if: (4) he is discharged by his client," by filing a motion with the court relieving him of the representation of his client.

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). The Rule provides that formal opinions are advisory only.