

Ethics Opinion No. 80-1

Propriety of Attorney Remitting to His Client Monies the Attorney Received on the Client's Behalf when the Attorney Either Knew or Should Have Known that there were Liens on that Money; (Vacated by 86-4) Propriety of an Attorney Filing a Proper Offer of Judgment when that Attorney is Aware that there are not Funds Available to Pay the Judgment, if Accepted.

The Ethics Committee has been asked the following two questions:

1. Attorney "A", in the course of his representation of his client, either knew or should have known that certain liens had arisen such as medical bills. Thereafter, Attorney "A" receives monies on behalf of his client which he immediately remits to the client, ignoring the liens. The client in turn fails to pay the creditors who were looking to the recovery as a source from which to be compensated. Has the attorney violated any ethical considerations?

2. Attorney "A" represents X, a plaintiff in a personal action. Attorney "B" represents defendant Y. Attorney "B" files a proper Rule 68 offer of Judgment for a reasonable amount. X instructs Attorney "A" to accept the offer of judgment and Attorney "A" does so. It turns out that there are not funds, nor have there ever been funds, to pay the judgment. Attorney "B" knew this when the offer was made and accepted. Attorney "A" did not. Has Attorney "B" violated any ethical consideration?

With respect to question 1, it is the Committee's opinion that the attorney has violated no ethical considerations or disciplinary rules in remitting the funds to his client. Obviously, attorneys are bound by their representations, and if Attorney "A" has represented to others, or led others to believe, that he would make reimbursement to them, then he must perform in accordance with those representations. Absent any commitment on the attorney's part, however, there is no violation of ethical considerations by failing to forward funds directly to the providers of medical care. A portion of the Committee's consideration is colored by its understanding of the substantive law, which is that providers of medical care in the State of Alaska do not customarily become entitled to "liens" on the proceeds of any third party recovery, although those providers may well have a contract action against the client, or a subrogation right against the third party. The Committee's basic position, however, is that an attorney has no duty, other than to avoid misrepresenting, to one not his client (*see* DR 7-102).

With respect to question 2, the Committee likewise feels that there has been no breach of any ethical consideration or disciplinary rule, so long as Attorney "B" made no representation, express or implied, that the judgment

would be paid. It is part adversary system for Attorney "A" to evaluate and make appropriate inquiry into the worth of the judgment, and so long as no misrepresentation is involved, Attorney "B" violates no ethical consideration in failing to undertake that investigation on behalf of Attorney "A".

Adopted by the Board of Governors on September 8, 1980.