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Informal Opinion 08 – 03

**Payment of Funds Due to Clients When
Lawyers Dispute the Division of Fees**

We are asked to offer our opinion on questions arising out of the transfer of approximately one hundred contingency fee client files from one firm to another, following a member's withdrawal from his former firm and joining a new firm. The lawyer now in the new firm is subject to contractual obligations to the old firm. The contract provides for a method of resolving fee division disputes. If unresolved, the disputes are to be arbitrated. The former firm turned over the files to the new firm and requested the new firm to apply a formula for dividing the fees, or obtaining a statement of fees due from the old firm, applying the formula, and paying the old firm upon settlement. Several cases have been settled and fees have been divided in accord with these arrangements. Recently, the former firm has asserted liens against settlements in letters to insurers, and the lawyer now representing the plaintiffs involved objects to the liens and asks for our opinion.

We are asked if it is unethical to assert a lien in these circumstances. Embedded in this question is a legal question. Does the former firm have the legal right to assert a common law charging lien in these circumstances? The answer is not clear to us and as the Committee does not declare the law, we decline to offer an opinion on the legal question. We believe it is premature to consider the ethical question.

We are asked to consider that the assertion of liens will delay payments to clients. This is a factual claim and we do not find it necessary to resolve it. It is sufficient to say that the former firm and the clients' new lawyer have obligations

to pay funds promptly to clients and others persons having an interest in settlement funds. Conn. Rule of Professional Conduct 1.15(e). The dispute is between the lawyers, not between clients and lawyers. Payments of funds due to clients should not be delayed. The portion of the fees subject to dispute should be held in escrow. Rule 1.15(f).

The two law firms have facilitated the transfer of files in accord with our recommendations in Conn. Bar. Assoc. Formal Op. 31 (Rev. 1988). A binding dispute resolution process exists to resolve disputes over the division of fees. At settlement, clients should be paid promptly.

Committee on Professional Ethics

By Wick R. Chambers

Wick R. Chambers, Chair