

FORMAL OPINION NO. 27*

The Committee's opinion has been sought upon the following set of facts:

Client retains A. Divorce action filed. Reconciliation. Action dismissed.

Client returns to A. New complaint drafted.

Before filing of new complaint, client retains B who drafts and files another divorce complaint.

A advises B of outstanding fee for original suit and his unfiled second complaint.

B mentions outstanding fee to client, but obtains decree without inquiring as to whether A has been paid; in fact, A has not been paid.

Has B violated his ethical duties?

The situation involves several considerations:

1. The client's freedom to choose or substitute attorneys is to be respected.
2. A lawyer may not properly ignore known customs or practices of the Bar or local Court, even when permitted by law, without timely notice to opposing counsel. (Canon 25, Professional Ethics.)
3. An attorney's compensation is a professional right. Candor or fairness requires that he be given reasonable chance to exert and protect such right, whether it be based upon a lien or not. (ABA Committee on Professional Ethics Opinion No. 17.)
4. Unless he has so agreed, a superseded attorney is not liable for fees due to superseded attorney. (Drinker, Legal Ethics, p. 200.)
5. The obligation for payment of fees is peculiarly that of the client. The attorney ordinarily acts only as an agent. (ABA Committee on Professional Ethics, Opinion No. 63.)

Applying these considerations to the question presented, we observe:

A. That the client was entitled to consult and retain B without notice or formal substitution since there was no action then pending in Court.

B. Since we are not advised as to the local custom of the area involved, we cannot express any opinion thereon.

C. That B demonstrated the fairness and candor expected of him, (unless local custom dictated otherwise) when he reminded client of the obligation to A.

D. That under the circumstances, B had no duty to collect or guarantee A's fees for the dismissed action or the unfiled second complaint.

E. That A's proper remedy--direct action against the client for his services--remains unimpeded by any conduct of B.

We conclude that, lacking evidence of violation of a local custom, there has been no culpable contravention of ethical standards.

DATED this 5th day of December, 1960.

*See, I.S.B. Opinion No. 24 (undated) relating to the responsibility for payment of fees by an attorney forwarding legal matters to another attorney.