ETHICS ADVISORY PANEL
OPINION #92-43, REQUEST #266
Issued July 23, 1992

An attorney seeks Panel advice regarding the following circumstances. The attorney represented a client in a divorce matter on an hourly basis. The client agreed to pay a retainer but could only pay a certain sum per week. The client made only four partial payments. The attorney prepared the case up to and including the final hearing at which time a decision pending entry of final judgment was issued. The client has not responded to numerous requests for payment. The attorney asks if and when the suit for payment of services may be filed.

The Panel agrees that this inquiry is governed by Rule 1.16 "Declining or Terminating Representation." Rule 1.16(d) states:

> Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrending papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned.

The Panel believes that the attorney must choose one of two options. The attorney may file the final judgment with the court as a reasonable step toward protecting the client's interest in accordance with Rule 1.16(d). In the alternative the attorney may also choose to petition the court to withdraw from the representation pursuant to Rule 1.16(b)(4) which states that:

> A lawyer may withdraw if withdrawal can be accomplished without material adverse effect on the interest of the client, or if:
>
> (4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled.

Once the representation has been concluded either by conclusion of the litigation or withdrawal, the attorney may bring an action for fees. However, the Panel does not believe that a suit against the client is proper unless or until the representation is concluded.