

Final

**ETHICS ADVISORY PANEL
OPINION NO. 96-35, REQUEST NO. 694
Issued November 14, 1996**

FACTS:

The inquiring attorney had represented various credit unions in the collection of delinquent accounts. With the collapse of Rhode Island Share and Deposit Indemnity Corporation in 1990, several of the credit unions were closed, after which time, the inquiring attorney continued to work on the accounts under the supervision of the statutory receiver Rhode Island Depositors Economic Protection Corporation (DEPCO) and also under the supervision of a company that managed the assets. Some of the accounts were paid, but others were uncollectible and were placed in storage by the inquiring attorney. The company that manages the assets has recently asked the inquiring attorney to retrieve his/her files on the accounts for transfer to new counsel, including those files that were inactive before 1990. The inquiring attorney states that on those accounts which he/she did not succeed in collecting, he/she expended considerable time in obtaining judgments and other information that will prove useful to new counsel.

ISSUES PRESENTED:

The inquiring attorney asks (a) whether he/she may charge the management company for his/her time involved in retrieving the files and preparing them for transfer and (b) whether he/she is entitled to an attorney's lien for the reasonable value of services performed on those accounts which he/she did not succeed in collecting.

OPINION:

The inquiring attorney may not charge for his/her time or for costs in preparing the client's files for transfer after discharge. The inquiring attorney is entitled to file an attorney's lien for the reasonable value of services performed prior to termination.

REASONING:

An attorney who is terminated is required under Rule 1.17(d) of the Rhode Island Supreme Court Rules of Professional Conduct to surrender papers and property to which the client is entitled. The Panel assumes from the facts that the inquiring attorney has been discharged by his/her client DEPCO, and not indirectly through the management company. The Panel also notes that the request for the client's files has been made by the management company, and not by the attorney's client DEPCO. Rule 1.6 relating to confidentiality would

prohibit the inquiring attorney from releasing the client's files to the management company without DEPCO's consent. See Rule 1.6.

Rule 1.17 (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, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned.

A client is entitled to the contents of the client's file excluding the attorney's work product. R.I. Sup. Ct. Ethics Advisory Panel Op.92-88(1993). It would be unethical under the Rules of Professional Conduct for the inquiring attorney to charge the client for either time or costs relating to the transfer of documents and property to which the client is entitled in the first instance. The inquiring attorney may produce photocopies of the documents for his/her own files at his/her own expense. See R.I. Sup. Ct. Ethics Advisory Panel Op. 93-84(1993).

The inquiring attorney may file an attorney's lien with respect to services performed prior to being discharged. The issue as to the amount of the lien was addressed in Ethics Advisory Panel General Informational Opinion No. 4 issued on May 23, 1991. The Panel concluded in that opinion that the proper measure of recovery of damages by a discharged attorney is the reasonable value of the services performed for the client prior to dismissal, citing Lisker v. Monti, 74 R.I. 310, 60 A.2d 485 (1948) and Lake v. Winfield Fuller Co., 54 R.I. 358, 173 A.119 (1938). The Panel noted that Rhode Island case law does not distinguish between contingency fee contracts and fixed fee contracts regarding the proper measure of recovery for an attorney who is discharged with or without cause prior to final resolution of the subject matter of the representation. R.I. Sup. Ct. Ethics Advisory Panel General Informational Op. No. 4.