



Committee on Professional Ethics

Opinion #474 - 10/4/77 (82-77)

Topic: Confession of judgment to secure attorney's fee.

Digest: Not per se improper for lawyer to obtain client's signature on confession of judgment for services previously rendered with understanding it will be filed only if fees not paid.

Code: EC 2-17, 2-18, 2-19, 2-23,
5-7;
DR 2-106, 5-103(A)(1)

QUESTION

May an attorney, as security for the payment of his fee, obtain a client's signature on an affidavit authorizing the entry of judgment against him with the understanding that the attorney will not file the affidavit or seek enforcement of a judgment entered upon it unless the client does not pay the agreed fee?

OPINION

For purposes of the question posed, the Committee assumes that a fee arrangement satisfactory to both attorney and client has been reached. See EC 2-19. In such a situation, it is not per se improper for an attorney to obtain a client's signature on an affidavit authorizing the entry of judgment against him with an understanding that it will be filed only if the agreed-upon fees are not paid. However, without passing on the legal effect of an affidavit confessing judgment executed prior to the performance of services constituting the consideration for the debt, it is our opinion that an attorney should not obtain such an affidavit from his client until after having rendered his services. See EC 5-7, DR 5-103(A)(1), Harris v. Harris, 84 Misc.2d 893, 378 N.Y.S.2d 298 (Sup. Ct. Kings Co. 1976). Cf., N.Y. State 253 (1972); ABA Inf. 593 (1962).

Of course, like any other creditor, an attorney obtaining such an affidavit would be bound by the applicable provisions of law relating thereto. See CPLR 3218.

In considering the use of a confession of judgment, a lawyer should be mindful of EC 2-23, which warns attorneys against suing a client for a fee "unless necessary to prevent fraud or gross imposition by the client," and should scrupulously observe the provisions of the Code bearing upon legal fees, particularly EC 2-17, 2-18 and 2-19, as well as DR 2-106.

We generally concur in the guidelines set forth in N.Y. County 430 (1950), which decided that acceptance of a confession of judgment

is not improper under circumstances there presented, provided that:

1. it is accepted as security for the payment of fees and not as payment;
2. the amount of the confession is agreed upon or to be fixed by a court (but see CPLR 3218(a), which provides that the debtor's affidavit must state the sum for which judgment may be entered);
3. the amount of the confession is commensurate with the value of the services rendered; and
4. the client is given a complete and full explanation of the character, effect and purpose of the document being signed.

Finally, it would be improper to obtain a confession of judgment unless the client clearly understands the nature of such an affidavit, and an attorney may not "use the extraordinary practice of a confession of judgment in dealing with clients whose ignorance or language difficulties make it unlikely that they will understand the full significance of a judgment against them, including its effect upon their credit standing and employment opportunities." N.Y. City 839 (1959).

For the reasons stated, the question posed is answered in the affirmative, subject to the qualifications set forth in this opinion.
