



ILLINOIS STATE
BAR ASSOCIATION

ISBA Advisory Opinion on Professional Conduct

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This Opinion was **AFFIRMED** by the Board of Governors in July 2010. Please see the 2010 Illinois Supreme Court Rule 764(h) and *Serio v. Equitable Life Assurance*, 184 Ill.App.3d 432, 132 Ill.Dec. 878, 540 N.E.2d 800 (1989). See also ISBA Ethics Advisory Opinion 90-26. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

Opinion No. 87-3
January 29, 1988

Topic: Rights of disbarred attorney to recover under a contingent fee contract for work done up until the date of disbarment, discharge, or other disqualification.

Digest: An attorney, following disbarment, discharge by the client, or other disqualification, has a right to recover the reasonable value of services rendered to the client up to the time of disbarment, discharge or disqualification.

Ref.: ISBA Opinion Nos. 245 and 262

Harris Trust & Savings Bank v. Chicago College, 116 Ill.App.3d 906, 452 N.E.2d 701 (Ill.App. 1st Dist., 1983)

Mireles v. Indiana Harbor Belt Railroad Corporation, and Marshall Teichner, respondent, Ill.App.3d __, __ N.E.2d __. Illinois Appellate Court, First District, March 30, 1987.

Baker v. City of Granite City, 112 Ill.App.3d 1096, 446 N.E.2d 531, 68 Ill.Dec. 625 (5th Dist. 1983)

Leoris v. Dicks, Ill.App.3d __, 501 N.E.2d 901, 903 (Ill.App.1st Dist. 1986)

FACTS

An attorney was retained on a contingent fee basis to prosecute an action for wrongful death on behalf of the decedent's estate. The attorney began work on the file, but was subsequently disbarred, or surrendered his/her law license, and therefore no longer authorized to practice law. The executor subsequently engaged another attorney to prosecute the case. Thereafter a recovery is had in the case either through settlement or trial.

QUESTIONS

1. Is the attorney entitled to be compensated for the work done prior to the date of disbarment, suspension or surrender of license? And, if so, on what basis?
2. Does the successor attorney have any obligation to divide the fee with the predecessor attorney or otherwise compensate the predecessor attorney?

OPINION

An attorney whose disbarment, suspension, or surrender of license, prevents him from carrying out a contingent fee contract of employment with a client is entitled to recover in quantum meruit for the reasonable value, if any, of the work done prior to his or her disbarment, suspension, discharge or disqualification.

In Harris Trust & Savings Bank v. Chicago College, 116 Ill.App.3d 906, 452 N.E.2d 701, 72 Ill.Dec. 448 (Ill.App. 1st Dist. 1983), the court stated that:

After his discharge, an attorney's right to recover fees is limited to reasonable fees for services rendered up to his discharge. (Rhoades v. Norfolk & Western Railroad Co. (1979), 78 Ill.2d 217, 35 Ill.Dec. 680, 399 N.E.2d 969; Department of Public Works v. Exchange National Bank (1981), 93 Ill.App.3d 390, 49 Ill.Dec. 218, 417 N.E.2d 1045.) The same rule applies to a disbarred attorney; his recovery is limited to the reasonable value of the services rendered up to the time of his disbarment.

The court cited authority to the effect that denying a disbarred, discharged, or otherwise disqualified attorney's claim for fees based on the reasonable value of the work performed would result in unjust enrichment and impose an economic sanction that might have no relation to the disbaring or disqualifying offense.

The court analogized the situation to that where the attorney is incapacitated by death, illness or insanity. The court further refused to follow authority depriving the disbarred attorney of any right to recover for work previously done.

The suit in Harris was brought by the trustee of a bankrupt lawyer in an attempt to obtain fees for the estate based on the work previously done by the lawyer. The court held that inasmuch as the bankrupt attorney had previously released the client from any claims for future attorney's fees, there was no basis for awarding any further fees on a quantum meruit theory.

See also, Mireles v. Indiana Harbor Belt Railroad Corporation, and Marshall Teichner, respondent, __Ill.App.3d__, __N.E.2d__. Illinois Appellate Court, First District, March 30, 1987, slip opinion (Where a \$100,000 settlement in a personal injury case was obtained, the trial court did not abuse its discretion in awarding an attorney who had been hired on a contingent fee basis, suspended, rehired, and then replaced by the client, the amount of \$750 for the reasonable value of his services.)

In determining the reasonable value of the disbarred or otherwise disqualified attorney's services, the court can take into account the extent to which the lawyer's disqualification necessitated certain previously done work to be duplicated by succeeding counsel. See Baker v. City of Granite City, 112 Ill.App.3d 1096, 446 N.E.2d 531, 68 Ill.Dec. 625 (5th Dist. 1983) (Where attorney was wrongfully discharged after obtaining a \$125,000 verdict, he was entitled to the reasonable value of his services at trial [33 1/3%], but his compensation for work done on the appeal was limited to the extent his work helped but did not duplicate the work of substitute counsel).

The successor attorney has no obligation to divide his fee with the disbarred or disqualified attorney. An agreement to divide future fees on a basis other than that of retained responsibility is void as against public policy. Leoris v. Dicks, __Ill.App.3d __, 501 N.E.2d 901, 903 (Ill.App. 1st Dist. 1986). The prior attorney could not have retained any responsibility after being disbarred or disqualified.

ISBA Opinion No. 245, December 28, 1964, indicates that where attorneys have agreed to work together on a contingent fee matter and one of them is disbarred during the pendency of the suit, it would be improper for the lawyer who has not been disbarred to share his contingent fee with the disbarred lawyer, since the disbarred lawyer retained no responsibility for the matter. "There is no provision in the Canons of Ethics which, in the Committee's judgment, would require the newly retained attorney to pay to the disbarred attorney any part of the fee." This opinion is consistent with Leoris supra. It does not, however, address the question whether the disbarred lawyer could recover under a quantum meruit theory.

In ISBA Opinion NO. 262, June 28, 1965, Opinion No. 245 was reconsidered and affirmed to the extent that it held that it is improper to divide a contingent fee with a lawyer who has been disbarred, since after the disbarment that lawyer can no longer retain any responsibility for the previously shared matter. The opinion went further, however, and, citing an early case, concluded that the disbarred attorney could not recover on a quantum meruit basis either. This conclusion was based on the theory that since the employment contract was an entirety, "there [could] be no apportionment of compensation" where the attorney failed to do all that he had agreed to do.

The more recent cases discussed above no longer adhere to the principle that a lawyer's contract of employment is an entirety that is not divisible for purposes of awarding him or her compensation. It is now recognized that disbarred or otherwise disqualified lawyer may properly obtain recovery for the reasonable value of work done prior to being disbarred or disqualified. Accordingly, the portion of Opinion No. 262 that is inconsistent with the current case law should no longer be

relied upon for guidance.

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