

## ETHICS OPINION

RO-90-86

Contingent fee – attorney lien – quantum meruit

### QUESTION:

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"During the year of 1990, I entered into a contingent fee contract with a client who suffered certain personal injuries. A copy of a like contract, however, with hers being a one-third (1/3) contingent fee as opposed to the one-half (1/2) as reflected in the attachment, was executed by the respective client. Over the course of the employment, this attorney incurred certain advanced expenses, and also, incurred actual work and labor on the case itself. Approximately four (4) months after this attorney was employed, this attorney received a notice to terminate employment with respective client. Client asked for previously employed attorney to surrender her file for which said attorney obliged said request.

Attorney submitted certain money charges to past client evidenced of advanced expenses, and an itemization of actual work and labor on said file from the date of employment to the date of termination.

In reliance upon Johnson vs. Cerva, 508 So.2d 257 (1987) and Gaines and Gaines vs. Hare, Wynn, 544 So.2d 445 (1989), which gives a discharged attorney on a contingent fee contract a right to a fee based upon quantum meruit and actual services rendered prior to discharge, would this attorney be in violation of any ethical standard with the Alabama Code of Professional Responsibility in the event said attorney institutes a legal action in a competent court of jurisdiction for the actual work and labor performed from the point of employment to the point of termination?"

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### ANSWER:

The Code of Professional Responsibility provides in Disciplinary Rule

5-103(A)(1) as follows:

**"DR 5-103 \* \* \***

- (A) A lawyer shall not acquire a proprietary interest in the transaction, cause of action or subject matter of litigation he is conducting for a client except that he may:**
- (1) acquire a lien granted by law to secure his fee or expenses involving and relating only to the matter of litigation he is conducting for a client and as defined by Sec. 34-3-60, Code of Alabama, et seq."**

**In accord with the above-cited provision of the Code of Professional Responsibility, an attorney may assert a lien, as granted by law, to secure fees and expenses. The Disciplinary Commission cannot consider or recommend specific forms of relief or courses of action in reference to legal remedies that might be available on these facts. In addition, the Disciplinary Commission cannot and does not, by stating that an attorney, pursuant to the Code of Professional Responsibility, is ethically permitted to seek legal relief to secure the payment of fees and expenses, opine that the method chosen on these facts is legally correct. The determination of whether a contingency contract, upon termination before full performance, terminates to a quantum meruit contract is beyond our review and calls for legal conclusions that the Commission is not**

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**authorized to make. However, as is made quite clear by the Code of Professional Responsibility, an attorney, once having made a reasonable determination as to the proper legal course to follow, may on these facts, seek appropriate relief. Rule 1.8(j) of the Rules of Professional Conduct, effective January 1, 1991, maintains the standard established by DR 5-103(A)(1).**

**AWJ/vf**

**12/6/90**