



Committee on Professional Ethics

OPINION #89-7

Topic: Bail Money
Digest: Attorney have not have bail money exonerated to him?
Code: DR 9-102(B); 9-102(B)(4)

QUESTION

WHERE AN ATTORNEY REPRESENTS A DEFENDANT IN A CRIMINAL PROCEEDING, AND IS ASKED TO PHYSICALLY DELIVER BAIL MONEY TO THE COUNTY TREASURER, IS IT ETHICAL FOR THE ATTORNEY TO REQUEST THAT THE ENTIRE AMOUNT OF BAIL BE EXONERATED BACK TO THE ATTORNEY AT THE CONCLUSION OF THE PROCEEDING WHERE THE AMOUNT OF THE FEE IS EITHER LESS THAN THE FULL AMOUNT OF THE BAIL OR IS IN DISPUTE?

OPINION

NYSBA Professional Ethics Committee Opinion #224 addresses the question of deducting legal fees from bail money, and states in pertinent part:

“The remedies of an attorney in respect to the method of payment of legal fees are a matter of law. Whether or not an attorney may deduct the amount of his fee from bail money deposited by his client and if he may, the extent of such rights are questions of law upon which the Committee does not pass. If the attorney has no such right, he should after placing the money in his special account, promptly remit the bail money to his client. DR 9-102(B)(4). If the attorney has such a right, but there is a dispute with the client with respect thereto or as to the amount of the fee, the lawyer should promptly advise the client thereof and take prompt steps to secure a judicial determination of the dispute. DR 9-102(B).”

Bail money deposited with the County Treasurer is, and remains, unless forfeited, the property of the person making such deposit.

Similarly, in the absence of an agreement to the contrary, only that person is entitled to the receipt of the funds upon the exonerated of bail.

The fact that the attorney may have physically delivered the bail money to the County Treasurer does not make the attorney the owner of those funds. The owner remains the person from whom the funds were obtained, be it the client or someone acting at the behest of or on behalf of the client. Absent an agreement to the contrary, only that person is entitled to the return of the funds.

Under no circumstances, even in the face of an agreement whereby the attorney is to receive all or a portion of its fee from the exonerated bail, is the attorney entitled to receive, retain or hold any of the exonerated funds that exceed the amount of his fee.

CONCLUSION

For the reasons hereafter stated, the question posed is answered in the negative.
