Ethics Jeopardy
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Presented by:
-Ryan Dove, Dove Law Firm, PLLC – Houston, TX
-Bryan Assink, Curtis | Castillo PC – Dallas, TX

Ethics Jeopardy

Fees and Retainers	Conflicts	Disclosures	Duties	Reasonable Investigation
100	100	100	100	100
200	200	200	200	200
300	300	300	300	300
400	400	400	400	400
500	500	500	500	500

Fee and Retainers 100

When a Debtor hires a lawyer for a bankruptcy filing involving a fixed fee the State Bar of Texas holds that the funds must initially be placed into an IOLTA account and cannot be designated as this common misnomer used by attorneys.

Fee and Retainers 100

What is earned upon receipt?

In Texas, a lawyer may not collect a nonrefundable fee if the fee is pre-payment of future services. See Tex. Comm. on Prof'l Ethics, Op. 431, 49 Tex. B.J. 1084 (1986). See also Tex. Comm. on Prof'l Ethics, Op. 611 (September 2011). See also Cluck v. Comm'n for Lawyer Discipline, 214 S.W.3d 736 (Tex. App.—Austin 2007, no pet.)

See also A Lawyer's Guide To Client Trust Accounts, https://www.texasbar.com/Content/NavigationMenu/ForLawyers/ResourceGuides1/TrustAccounts/GuidetoTrustAccounts.pdf (last visited July 17, 2018). "Any unearned fee or advance payment of expenses should be deposited into a trust account. Use of a trust account is appropriate whether it involves an hourly fee, flat fee, contingent fee or prepayment of an expense." "Flat fees that have not been earned, regardless of whether the fee is deemed 'nonrefundable' in the fee agreement. (See Appendix 3 for Cluck v. Comm'n for Lawyer Discipline.)"

Note that fees that have not yet been earned belong to the client and must be placed into an IOLTA account pursuant to Rule 1.14(a) of the Texas Rules of Disciplinary Conduct.

Fees and Retainers 200

This type of two part contract for Chapter 7 bankruptcy services may not be allowed in some jurisdictions.

Fees and Retainers 200

What is a bifurcated fee contract?

There is a growing trend towards debtor lawyers offering a low money down or nothing down Chapter 7 bankruptcy filing, with a pre-petition and optional post-petition contract. The courts are split on if this type of contract is allowed.

See Deluca v. Seare (In re Seare), 515 B.R. 599 (B.A.P. 9th Cir., 2014). The retainer agreement did not disclaim adversary work but stated it would be performed for an extra fee. The Debtor's lawyer refused to represent the debtor in the adversary and the court found the lawyer was bound to represent the debtor in the adversary. The court left room that a contract disclaiming any adversary may be allowable.

See also In re Mansfield, 394 B.R. 783 (Bankr. E.D. Pa., 2008) and Bethea v. Robert J. Adams & Associates, 352 F.3d 1125 (7th Cir., 2003). These cases held that pre-petition fees are discharged and collecting them post-petition is a violation of the discharge injunction.

See also In re Slabbinck, 482 B.R. 576 (Bankr. E.D. Mich., 2012) holding that a lawyer may have a limited scope pre-petition Chapter 7 contract followed by an optional post-petition Chapter 7 contract for the remaining services if the debtor is given sufficient disclosures and information and if the contract complies with applicable ethical rules.

See also US Trustee v. Ashcraft (In re Gilmore), Bankr. C.D. Cal., 17-ap-01271, Complaint 12/12/17. The US Trustee has sued a large factoring company and a participating attorney for his no money down Chapter 7 practice.

Title search: Ethics Jeopardy

Also available as part of the eCourse
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