

MINUTES

COMMITTEE: Ethics Committee

DATE: May 9, 1996

8. CHAPTER 11, RULE 7

A lawyer (Lawyer X) asked for the Committee's opinion in the following situation: Lawyer X acts for a creditor which claims a certain sum is owed to it by Company A. Company A claims that a lesser amount is owing to the creditor and has forwarded funds to Lawyer X for that lesser amount. Lawyer X has placed those funds in trust.

The letter from Company A which accompanied the cheque for the lesser amount contained a paragraph indicating that Company A's lawyer had advised it that the cashing of the cheque by the creditor would relieve Company A of any obligation to pay the higher amount.

The lawyer has asked the Ethics Committee whether the statement of Company A that cashing of the cheque would extinguish any claim by the creditor to a higher amount constitute a trust condition. If that is so does that condition make it improper for Lawyer X to deal with the funds sent to him by Company A unless he has instructions from his client to accept those funds in full satisfaction of his client's claim.

The Committee noted that the letter from Company A to the lawyer was not artfully drafted but considered that it would be sharp practice for the lawyer to cash the cheque and then accept instructions to pursue the additional amount that the creditor alleged is owing. The Committee was of the view that the lawyer is bound to send the cheque back, or return the funds held in trust if the cheque has been cashed, if he accepts instructions from the creditor to sue Company A for the full amount allegedly owing.