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## ACCEPTING CASE HANDLED BY ANOTHER LAWYER

Adopted February 3, 1968.

Addendum issued 1995.

### *Syllabus*

A lawyer may properly accept employment to handle a matter which has been previously handled by another lawyer, provided that the first lawyer has been given notice by the client that his employment has been terminated.

### *Facts*

Lawyer A has begun representing a client on a particular matter. Subsequently, the client contacts Lawyer B and says that he wants to terminate Lawyer A's employment and employ Lawyer B on this matter. Lawyer B asks whether he may accept the employment.

### *Opinion*

The American Bar Association Committee on Professional Ethics has long held that the client has the right to be represented at all times by counsel of his own selection. Canon 7, ABA Opinions on Professional Ethics, Formal Opinion No. 10. A lawyer may properly accept employment to handle a matter which has been previously handled by another lawyer, provided that the superseding lawyer has assured himself that the first lawyer has been given notice by the client that his employment has been terminated. As ABA Formal Opinion No. 10 points out:

The lawyer originally engaged has his remedy at law for any breach of contract that may occur through the client's termination of his employment but he cannot insist that his professional brethren refuse employment in the matter merely because he claims such a breach of contract. To hold otherwise would be to deny a litigant's right to be represented at all times by counsel of his own selection.

Moreover, a superseding lawyer is not responsible for the fees due the superseded one. ABA Formal Opinion 130; ABA Informal Opinion 243. Any question as to the amount of a lawyer's fee or method of its payment is a matter of contract, express or implied, to be construed as other contracts are construed. Any controversy concerning such a matter is a matter of law to be determined by the courts. See ABA Formal Opinion 63. However, the superseded lawyer is entitled to notice so as to enable him to protect his right or lien. ABA Formal Opinion 17.

### *1995 Addendum*

This Opinion was based upon the Canons of Professional Ethics, the predecessor to the Code of Professional Responsibility. The Colorado Rules of Professional Conduct became effective on January 1, 1993, replacing the Code of Professional Responsibility. While the language of the Rules is somewhat different from the Code and the Canons, the Ethics Committee considers this Opinion to continue to provide guidance to attorneys in this area. Attorneys are cautioned to review The Colorado Code of Professional Responsibility (found in the *Colorado Ethics Handbook*), to update the research contained in this Opinion and to conduct any independent research necessary.

Relevant provisions of the Colorado Rules of Professional Conduct, which should be examined together with this Opinion, are contained in Rule 1.16 (regarding declining or terminating representation).