# OPINION NO. 4

Adopted: October 12, 1973.
Amended: December 4, 1987.
Repealed: October 25, 2002.

## *Comment*

*Adopted in 1973, Opinion No. 4 addressed a lawyer's withdrawal from representation for nonpayment of fees. The opinion contained res ipsa loquitur or switching burden of proof provision that placed higher burden of proof upon lawyers who failed to enter into written fee agreements with clients. Specifically, the opinion required lawyers without written fee agreements to justify their withdrawal for nonpayment of fees by proving the client's noncompliance with the oral fee arrangement by a standard of clear and convincing evidence.*

*The switching burden of proof provision, although laudable for its encouragement to use written fee agreements, has little, if any basis in the Rules of Professional Conduct. Without a sufficient nexus to the substantive ethics rules, this requirement appeared to be a regulation that went beyond that authorized by the Supreme Court, especially in light of the Panel File No. 99-42 decision.*