

COMMITTEE: Ethics Committee

DATE: June 14, 2006

3. CHAPTER 10: CIRCUMSTANCES UNDER WHICH LAWYER MAY WITHDRAW FROM LEGAL AID CASE WHEN FEES ARE INADEQUATE

A lawyer who acted for a legal aid client in an immigration matter recently received a decision of the Registrar in which the Registrar upheld the right of the Legal Services Society to decline to give him extra fees, after the case was completed. In view of the Registrar's decision, the lawyer asked a number of questions of the Committee concerning the propriety of accepting legal aid retainers he expects to be unable to complete and the circumstances under which he may properly withdraw from immigration cases referred to him on a legal aid basis.

In the Committee's opinion, the lawyer has an obligation to deal with both the client and the Legal Services Society in good faith. It follows that he should not accept an immigration retainer from the Legal Services Society that he does not expect to be able to complete for the fee offered, unless he has the agreement of the Society and the client to such an arrangement. Once the lawyer has accepted the case, withdrawal from the case is governed by the rules in Chapter 10 of the *Professional Conduct Handbook*. Assuming Chapter 10, Rules 1 & 2 do not apply, the lawyer would be permitted to withdraw under Rule 3 if the withdrawal is not unfair to the client and is not done for an improper purpose. Whether the lawyer is able to conform to this requirement in an individual case will, of course, depend on the particular circumstances of the case.

With respect to the lawyer's specific questions, the Committee gave the following opinions:

1. Is it proper for him to accept a legal aid immigration case and withdraw when the amount of work performed on the case would be sufficient to attract the maximum fee permitted, even though the case is uncompleted?

Answer: Not unless he has the consent of the client and the Legal Services Society to do so.

2. Under what circumstances would he be permitted to withdraw from such a case?

Answer: Only when he can comply with the rules set out in Chapter 10 of the *Professional Conduct Handbook*.

3. Is he entitled to accept a legal aid immigration retainer knowing in advance that he will likely have to withdraw if he cannot complete the work within the financial limits prescribed (which is most of the time)?

Answer: Not unless he has the consent of the client and the Legal Services Society to do so.

4. Is he entitled to withdraw now on all legal aid retainers without completing the work?

Answer: Only if he is permitted by Chapter 10 to withdraw, having regard to the circumstances of each individual case.

JO/
June 14, 2006.