

COMMITTEE: Ethics Committee

DATE: March 25, 2003

CHAPTER 10, RULE 7: WHETHER COUNSEL WOULD BE IN VIOLATION OF THE RULE IF HE WITHDRAWS

A lawyer has acted for a client on an extradition matter since the end of 2002. He had previously acted for the client on a citizenship matter beginning in December 2001. The extradition proceedings to this time have involved a fitness hearing in which the client asserts that he is incapable of properly instructing counsel by reason of mental disability. The fitness hearing commenced in November 2002 and has run for about 10 days since that time. The lawyer expects the fitness portion of the hearing to conclude within a week, with the extradition hearing to follow either immediately after the fitness hearing, or shortly thereafter.

The lawyer was retained by the client in May 2002. There was no specific retainer letter but it was agreed that the client would place money in the lawyer's trust account and the lawyer would bill against those funds from time to time. The lawyer has done that by rendering accounts as the services were provided. The client and his wife covered all of the lawyer's accounts up until March 2, 2003 when the judge ordered the accounts for the balance of the fitness hearing to be paid by the government. For both the citizenship matter and the fitness hearing until March 2, 2003 the client and his wife have paid the lawyer about \$30,000, including disbursements. In February 2003 the client and his wife informed the lawyer that their savings were exhausted and they would be unable to deposit any more funds in trust.

Although the lawyer will be paid by government for the fitness portion of the hearing from March 2, 2003, the client was unsuccessful in securing legal aid for the balance of the extradition hearing, or in obtaining an order from the Court (a "Rowbotham order") requiring government to pay his fees for the balance of the hearing. The difficulty with obtaining any further legal aid or government funding appears to be that the client's wife owns the house in which she and her husband live and the client transferred his interest in the house to his wife a short time ago. In affidavits the wife has advised that there were two reasons for doing this: One was to protect her in the event he was extradited. The other was to protect her in view of his failing health.

The lawyer advised that he does not know how long the extradition hearing will take to conclude if it proceeds, but expects that it will take at least until the end of May. New evidence is still being disclosed to him. The lawyer advises that the client cannot retain other counsel without any funds, so if he is required to only withdraw if reasonable time is available for other counsel to be arranged, he could never withdraw under these circumstances since the client could never retain other counsel. The lawyer has not made inquiries about the availability of other counsel.

The lawyer has not advised the client that he would be forced to withdraw if he is unable to pay the lawyer's fees, but he has mentioned this difficulty to the client's wife and informed her of the severe hardship that continuing to act without payment would impose on him.

The lawyer asked the Ethics Committee whether it would be ethical for him in these circumstances to withdraw at the close of the fitness hearing. He is a sole practitioner and has advised that he will be financially ruined by weeks of expensive court attendance in another city away from his residence.

The Committee noted that Chapter 10, Rule 7 of the *Professional Conduct Handbook* requires that a lawyer who decides to withdraw as counsel because the client has not paid the lawyer's fee when due shall withdraw in sufficient time to enable the client to obtain the services of another lawyer and to enable that other lawyer to prepare adequately for trial. It was the Committee's view that it would be improper for the lawyer to withdraw from representing his client on the extradition matter without complying with Rule 7.

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