

## MINUTES

**COMMITTEE:** Ethics Committee

**DATE:** September 2, 2004

### **4. CHAPTER 11, RULE 10: WHETHER PROPER TO IMPOSE UNDERTAKING REQUIRING A CHEQUE TO BE CERTIFIED**

The Committee considered whether, if there is no agreement between the parties that a lawyer will provide a certified trust cheque in payment of an amount due, it is proper for a lawyer to impose an undertaking on another lawyer that a trust cheque be certified. The Committee noted that Chapter 11, Rule 8 stipulates that, except in the most unusual and unforeseen circumstances which the lawyer must justify, a lawyer who withdraw or authorizes the withdrawal of funds from a trust account by cheque undertakes that the cheque will be paid.

It was the Committee's view that a lawyer may have sound business reasons for seeking the certification of a cheque in these circumstances, and it may be simpler for the lawyer drawing the cheque to attend to its certification than for the lawyer receiving it to do so. Although the lawyer on whom the undertaking is imposed may properly refuse it if there is no contractual requirement to accept it, it is not unreasonable or otherwise improper for a lawyer acting in good faith to attempt to impose such an undertaking.

JO/  
September 2004