

ETHICS ADVISORY PANEL  
OPINION #94-73 REQUEST #544  
Issued November 15, 1994

The inquiring attorney filed a lawsuit on behalf of a now deceased client. The inquiring attorney has attempted to substitute the decedent's personal representative or surviving spouse as the plaintiff in place of the decedent but the widow is unwilling to cooperate with the inquiring attorney. The attorney seeks the Panel's guidance in withdrawing from this matter.

Rule 1.17(b) entitled "Declining or Terminating Representation" states the following:

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(1) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(2) the client has used the lawyer's services to perpetrate a crime or fraud;

(3) the client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;

(4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(5) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(6) other good cause for withdrawal exists.

(c) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

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(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for which the client is entitled and refunding any advance payment of fee that has not been earned.

The Panel has previously addressed the subject of withdrawal when the inquiring attorney's efforts to communicate with clients elicited no response. See, General Information Opinion #6, Issued June 30, 1993.

Rule 1.17(d) allows an attorney to withdraw from representing a client if it can be accomplished without adversely effecting the client's interests. According to the facts provided, the widow's behavior is prohibiting the inquiring attorney from rendering effective representation and therefore withdrawal is permitted under Rule 1.17(b)(5).