

Final

Rhode Island Supreme Court Ethics Advisory Panel
Opinion 2003-08 Request # 870
Issued December 4, 2003

Facts:

The inquiring attorney proposes to include in a retainer agreement a provision that permits the inquiring attorney to cease working on the client's behalf, without withdrawing from the representation, when the client does not remain current in the client's obligation to pay the attorney's fee.

Issue Presented:

The inquiring attorney asks whether his/her proposal comports with the Rules of Professional Conduct.

Opinion:

A lawyer may not include in a retainer agreement a provision that permits the attorney to cease working on the client's behalf, without withdrawing from the representation, if the client does not make payments as agreed.

Reasoning:

Pursuant to Rule 1.3, a lawyer has a duty to diligently represent a client. That duty attaches unless the lawyer withdraws. Unless the relationship is terminated, a lawyer should carry through to conclusion all matters undertaken for a client. Commentary to Rule 1.3. If a client breaches his agreement to pay the lawyer, the lawyer must either continue to work on a client's case, or seek to withdraw pursuant to Rule 1.17(b)(4)(lawyer may withdraw if client fails substantially to fulfill an obligation to lawyer regarding lawyer's services and has been given reasonable notice.) The lawyer may withdraw only if withdrawal can be done without material adverse effect on the client's interests (Rule 1.17(b)); and if there is pending litigation, only if the judge permits it (Rule 1.17(c)).

For these reasons, the Panel concludes that the inquiring attorney may not include in a retainer agreement a provision that permits the attorney to cease working on the client's behalf without withdrawing if the client does not make payment. See Missouri Informal Advisory Op. 2000172 (2000) (lawyer may not include provision in retainer agreement that lawyer will cease work in client's case if client doesn't pay as agreed.)

The Panel's guidance is restricted to interpretations of the Rules of Professional .Conduct and does not extend to issues under the State Ethics Code or any other rules, regulations or laws that may have bearing on the issues raised by this inquiry.