

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-247
Issued: July 1981

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question: May an attorney, in a civil or criminal matter, fail to appear before a court hearing when the attorney has not been paid for the legal services to be rendered?

Answer: Qualified no.

References: DR 1-102, 2-110; Canon 2; EC 2-23, 2-25, 2-32

OPINION

This question arose when an attorney appeared with a defendant in district court in a criminal matter but did not appear in a subsequent hearing involving the same matter because the defendant's family had not made the required financial arrangements and the attorney therefore refused to further represent the defendant. It does not appear that the attorney had notified the court of the withdrawal.

DR 2-110 sets forth the ethical responsibilities of an attorney in withdrawing from employment. An attorney may not withdraw from employment until "he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client." (DR 2-110(A)(2)) In a proceeding before a tribunal, a lawyer may not withdraw without the tribunal's permission, if permission for withdrawal is required by the rules of that tribunal. (DR 2-110(A)(1)) Therefore, if the rules of the court require permission for withdrawal, then an attorney may not withdraw from a case without the court's permission.

When a client "deliberately disregards an agreement or obligation to the lawyer as to expenses or fees" the lawyer may "request permission to withdraw the matters pending before a tribunal." (DR 2-110(C)(1)(f)) This provision must, however, be read in light of the other obligations of an attorney including the obligation to avoid conduct which is prejudicial to the administration of justice (DR 1-102(A)(5)) and the lawyer's obligation to assist the legal profession in fulfilling its duty to make legal counsel available (Canon 2, EC 2-25). In addition, a lawyer should be "zealous in his efforts to avoid controversies over fees with clients...." (EC 2-23).

A decision by a lawyer to withdraw should be made only on the basis of compelling circumstances.... A lawyer should not withdraw without considering carefully and endeavoring to minimize the possible adverse effect on the rights of

his client and the possibility of prejudice to his client as a result of his withdrawal. Even when he justifiably withdraws, a lawyer should protect the welfare of his client by giving due notice of his withdrawal.... (EC 2-32)

An attorney, then, is ethically bound to withdraw only for “compelling” reasons, and to avoid injury to the client by giving proper notice to the client and obtaining (when required by court rules) the permission of the court. An attorney should be particularly circumspect in withdrawing because of disagreements regarding fees. An attorney who withdraws without substantial reason and without giving full and adequate notice and taking additional steps to avoid prejudice to the client is not acting ethically. When an attorney appears to take a case and then refuses to make court appearances because of dissatisfaction with the financial arrangements, he is bound to bring the profession into disrepute.

Some question may arise about the point at which “employment” begins for an attorney. There are circumstances in which that question poses serious factual problems. However, when an attorney has agreed to make an appearance in court, has made an appearance on behalf of a client, or has otherwise led a court or client to believe that he will make an appearance, employment has commenced for the purpose of DR 2-110.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.