

The Supreme Court of Texas
Professional Ethics Committee
Opinion No. 565

January 2006

QUESTION PRESENTED

Must a lawyer continue to represent a client in an appeal on a remaining matter in a case when the client has filed pro se motions seeking relief from a settlement of the case and the client has filed two grievances against the lawyer?

STATEMENT OF FACTS

A lawyer represents a client in litigation against multiple defendants. One of the defendants was dismissed and recovered attorney's fees. The underlying suit was settled. Thereafter, the client filed pro se motions seeking relief from the settlement and two grievances against the lawyer. However, neither the client's pro se motions nor the grievances took issue with the dismissal and the recovery of attorney's fees by one of the defendants. The lawyer has not been discharged by the client. Must the lawyer represent the client on the appeal of the defendant's recovery of attorney's fees?

DISCUSSION

This question requires analysis of several provisions of the Texas Disciplinary Rules of Professional Conduct. First, Rule 1.06(b)(2) generally prohibits a lawyer's representation of a person if the representation of that person reasonably appears to be or become adversely limited by the lawyer's own interests. Since the client's appeal of the defendant's recovery of attorney's fees has nothing to do with the grievances or the pro se motions, it would not reasonably appear that the representation of the client on that appeal is or has become adversely limited by the lawyer's own interests.

Second, Rule 1.15(a)(1) requires that a lawyer withdraw if the lawyer knows or believes that the lawyer is or may be a witness necessary to establish an essential fact on behalf of the client. Since the propriety of the grant of attorney's fees will be decided by the appellate court on the record established in the trial court prior to the settlement, there is no reason for the lawyer to know or believe that the lawyer is or may be a witness necessary to establish an essential fact on behalf of the client.

Third, Rule 1.15(b) prohibits a lawyer from withdrawing from representation of a client unless one of several circumstances exists, including that the client insists upon pursuing an objective that the lawyer considers repugnant or imprudent or with which the lawyer has fundamental disagreement or that the representation has been rendered unreasonably difficult by the client. Assuming that by filing the grievances and pro se motions seeking relief from the settlement, the client is insisting upon pursuing an objective that the lawyer considers repugnant or imprudent or with which the lawyer has a fundamental disagreement or the client has rendered the representation unreasonably difficult, the lawyer may seek to withdraw. The lawyer is also permitted under Rule

1.15(b)(1) to seek to withdraw if the withdrawal can be accomplished without material adverse effect on the interests of the client.

Under Rule 1.15(c), even if a lawyer is permitted by Rules 1.15(b) to withdraw from representing the client, the lawyer must continue the representation when ordered to do so by the court.

If the lawyer withdraws from representation of the client in compliance with Rules 1.15(b) and 1.15(c), the lawyer must also comply with Rule 1.15(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 the employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advanced payments of fee that has not been earned.....”

CONCLUSION

The Texas Disciplinary Rules of Professional Conduct require that a lawyer continue to represent a client in an appeal on a remaining matter in a case when the client has filed pro se motions seeking relief from a settlement of the case and grievances against the lawyer unless the lawyer is permitted under Rule 1.15(b) to withdraw and the court does not require that the lawyer continue the representation. Any withdrawal from representation must be in compliance with the requirements of Rule 1.15(d) that the lawyer take reasonable steps to protect the client’s interests.