

TERMINATION OF REPRESENTATION
- CONFLICT OF INTEREST – MULTIPLE
REPRESENTATION: CONTINUED
REPRESENTATION, BASED ON
ABILITY TO ADVANCE COSTS AND
FEES, OF SOME, BUT NOT ALL,
PLAINTIFFS WHO HAVE OBTAINED
FOREIGN JUDGMENTS.

You have presented a hypothetical situation in which an attorney represents five plaintiffs. You indicate that, in the same suit in U.S. District Court involving these plaintiffs, the attorney obtained five different judgments, in different amounts, against a U.S. citizen and his wife, a noncitizen. In order to attempt to enforce the judgment against the defendants, who are located in a foreign country, a considerable amount of cost and foreign attorneys' fees must be advanced to the foreign attorneys. You advise that three of the plaintiffs are willing to advance their proportionate shares, based on the amounts of their judgments; one is unwilling to advance any funds; and the fifth plaintiff is unable financially to advance funds.

You have asked the Committee to opine, under the facts of the inquiry, (1) whether it is ethical for the attorney to represent the three paying plaintiffs only, and (2) how to distribute the proceeds, in the event the judgment collected is insufficient to pay all claims.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:2-108(D), which provides that, upon termination of representation, a lawyer shall take reasonable steps for the continued protection of a client's interests, including giving reasonable notice to the client, allowing time for employment of other counsel, delivering all papers and property to which the client is entitled, and refunding any advance payment of fee that has not been earned; and DR:5-105(A, B, and C) which permits a lawyer to accept or continue multiple employment, where the exercise of his independent professional judgment in behalf of one client will be or is likely to be adversely affected by his representation of another client, only if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of such potential effect.

As to your inquiry whether the attorney may represent only the paying plaintiffs, the Committee believes that a suit to enforce the judgment would begin a new representation, albeit related to the original representation. Since, prior to the representation, no action is before a court to enforce the judgment, leave of court for withdrawal by counsel of record would not be necessary. The Committee has consistently been of the view that nothing contained in the Code of Professional Responsibility requires that an attorney provide representation to all potential clients. See EC:2-28. In the circumstances you hypothesize, the Committee is of the view that the attorney is not obligated to represent the nonpaying plaintiffs. However, the Committee is of the further opinion that the attorney still has a duty to protect the nonpaying client's interests under DR:2-108(D) and should advise those former clients as to the methods of enforcement of the judgment and any time limitations imposed on such actions.

With respect to the multiple representation of the three creditors, the Committee directs your attention to prior LE Op. 478 which concluded that it is not improper for an attorney to represent several creditors against a single debtor provided that, after full disclosure to each creditor, all creditors consent to the multiple representation and concur as to the

distribution of any funds collected should the amount be inadequate to pay fully each creditor's claim.

Committee Opinion
September 1, 1992