

LEGAL ETHICS OPINION 1558

WITHDRAWAL OF REPRESENTATION:  
CONTINUED REPRESENTATION OF  
CRIMINAL DEFENDANT CLIENT WHO  
HAS ALLEGED COUNSEL PRESSURED  
HIM INTO GUILTY PLEA.

You have presented a hypothetical situation in which Attorney represents a criminal defendant (" Client"). In the multi-defendant case in federal court (which applies Virginia ethical rules), all defendants, including Client, plead guilty. You indicate that Client subsequently tells the Probation Office that he is innocent and that Attorney pressured him into a plea of guilty. Subsequently, Probation Office prepares a presentence report detailing Client's assertions. Client is the only defendant represented by Attorney.

You have asked the committee to opine, under the facts of the inquiry, (1) whether Attorney should seek leave to withdraw before sentencing; and (2) whether Attorney should, if requested before withdrawal, file a motion to withdraw a plea of guilty.

The appropriate and controlling disciplinary rules relative to your inquiry are DR:2-108(C), which states that counsel of record shall not withdraw except by leave of court after notice to the client of the time and place of a motion for leave to withdraw. In any other matter, a lawyer shall continue representation, notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal. Although DR:5-101(A), precluding a lawyer's acceptance of employment if his professional judgment on behalf of the client may be affected by his own personal interests, would be applicable at the outset of representation, it is inapposite to the circumstances you describe which involve an already-existing attorney-client relationship.

As to whether Attorney should seek to withdraw before sentencing, the committee is of the opinion that the instant case is one in which the self-interest of the lawyer is in conflict with that of the client, since Client now claims innocence and that Attorney pressured him to enter a guilty plea. The committee is of the view that Client's statements to Probation Office have created a conflict between Client's interest in defending against the criminal charge and Attorney's interest in his reputation, which conflict might give rise to a claim that Attorney did not zealously pursue Client's case, i.e., a claim of ineffective assistance of counsel. See LE Op. 1122. In these circumstances, the committee believes that full disclosure to and consent from Client would not obviate the effect of Client's and Attorney's differences. Therefore, the committee opines that Attorney should seek leave to withdraw under the provisions of DR:2-108(C) before Client's sentencing. The committee cautions, however, that should the court deny Attorney's motion for withdrawal, he would be bound to continue the representation. See LE Op. 514.

As to whether Attorney should file a motion to withdraw the guilty plea, the committee believes it is incumbent upon the attorney to take all steps necessary to avoid prejudice to the client's rights until such time as the Court may grant counsel's motion to withdraw.