



Committee on Professional Ethics

Opinion #360 - 9/10/74 (37-74)

Topic: Assigned counsel; request to be relieved.

Digest: Lawyer should not request to be relieved as assigned counsel except for compelling reasons.

Code: EC 2-25; 2-29.

QUESTION

Is it proper to apply to be relieved of a court assigned case without a compelling reason advanced in good faith?

OPINION

Historically it has been the practice of the courts to appoint counsel to defend indigent persons who are accused of crime. EC 2-25. Drinker, Legal Ethics 62 (1953) states:

"Lawyers have always regarded the acceptance of such service as one of the obligations incident to their professional status and privileges."

With changing social conditions, assignment of counsel by courts has expanded into fields other than the criminal law and that attitude is reflected in EC 2-29 which provides:

"When a lawyer is appointed by a court or requested by a bar association to undertake representation of a person unable to obtain counsel, whether for financial or other reasons, he should not seek to be excused from undertaking the representation except for compelling reasons. Compelling reasons do not include such factors as the repugnance of the subject matter of the proceeding, the identity or position of a person involved in the case, the belief of the lawyer that the defendant in a criminal proceeding is guilty, or the belief of the lawyer regarding the merits of the civil case."

Refusal to accept a court assignment, whether or not a fee is provided, violates the Code. In order to fulfill the responsibility of the profession to the public and to the courts, lawyers should accept court assignments, compensation considerations notwithstanding, and should not request to be relieved except for compelling reasons advanced in good faith whether or not compensation is provided. Absence of compensation alone is an insufficient grounds to be relieved.

The propriety or validity of an assignment is a question of law upon which we do not pass.
