

Utah Ethics Opinions

1979.

55. USB EAOC Opinion No. 55

Utah State Bar

Ethics Advisory Opinion No. 55

Approved April 12, 1979

Summary: An attorney may withdraw as counsel when his client disregards a fee agreement or refuses to discuss the fee agreement and has filed a bankruptcy petition seeking to discharge accrued fees.

Facts: The following question is posed to the Committee: May an attorney withdraw as counsel for a client who has filed bankruptcy proceedings through another attorney, which proceedings would result in discharge of the debt for legal fees owed to the first attorney? The client refuses to discuss future fees to be incurred in several pending matters. The attorney also wishes to know what he should do with files in progress in his possession.

Opinion: Circumstances permitting withdrawal in matters pending before a tribunal include, in Canon 2, DR 2-110(C)(I)(f), where the client "deliberately disregards an agreement or obligation to the lawyer as to expense or fees." Where the client refuses to even discuss means of paying legal fees, this would seem to justify withdrawal as counsel by the attorney, as any original agreement on fees has been nullified by the bankruptcy petition. Of course, the courts involved must permit the withdrawal.

In effecting the withdrawal, the attorney should comply with the provisions of Canon 2, DR 2-110(A)(2):

"In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules."

All files should be turned over to the succeeding attorney, or the client, if new counsel is retained within a reasonable length of time.

Rule Cited:

Canon 2