

Utah Ethics Opinions

1977.

39. USB EAOO Opinion No. 39

Utah State Bar

Ethics Advisory Opinion No. 39

Approved December 12, 1977

Summary: A Legal Aid Society can collect awarded attorney's fees for clients from clients opponents if the fees become collectible, provided the fees are paid to the society and not to the individual attorney.

A Legal Aid Society client who becomes able to pay for private counsel should hire private counsel. However, a Legal Aid Society client who is only partially able to pay for counsel should be aided by the Legal Aid Society.

Facts: The question you have propounded is two fold:

1. May a Legal Aid Society collect attorney fees from defendants against whom judgments for such fees have been awarded, when and if such persons become able to pay those fees? Normally such fees would be awarded in divorce proceedings or in orders to show cause on behalf of welfare recipients, but would not be collectible at the time awarded by reason of the impecunious circumstances of the parties. Subsequently, however, the defendant, by reason of gaining employment, may be able to respond to the attorney fee judgment.

2. In the event a client becomes able to pay in part for services of the Legal Aid Society, after initially being eligible for legal aid services, may a Legal Aid Society collect fees from such clients?

You have indicated that the Legal Aid attorneys are now on full-time employment with the Legal Aid Society and can engage in private practice only on an isolated case basis and then only with the approval of the Board of Directors of the Legal Aid Society.

You have indicated also that any funds generated from either of the sources, the subject of your inquiry, would go back to the Legal Aid Society and would be used for Legal Aid purposes and would be reflected in Your accounting with the funding agencies by whom you are funded. No part of the funds would be paid to attorneys for the Society.

The question appears to be primarily one of policy, since the ethical problems are largely obviated by the fact that

none of the monies would be paid to the Legal Aid attorneys. The North Carolina Bar had this issue presented to it in opinion CPR-47, April 18, 1975, and ruled that a Legal Aid Society may seek court awarded legal fees from its client's opponents if the fees go to the society rather than to the individual attorney.

Opinion: By way of analysis, the service to the legal aid recipient must be given at the time the need arises with no expectation of the service being later paid for, and it is only fortuitous circumstances which occasionally may make the service reimbursable.

Shifting emphasis to the legal aid client's opponent for a moment to analyze his or her position puts the matter into perspective. If that opponent should pay for the service, and could pay for the service at the time the service was to be rendered, the client would not qualify for Legal Aid services, but would have been referred to a private attorney who could have enforced the attorney fee obligation. However, if the client is not able to pay - a typical legal aid situation - then the service is rendered by the Legal Aid Society.

Should the opponent be required to pay that which the court ordered him or her to pay, if subsequently the ability exists? If the opponent is not required to pay that which the court ordered, that opponent of the legal aid client walks away from the situation unjustly enriched to the extent he has not been required to meet his court-ordered obligation, and those funding the Legal Aid Society are losers.

Carried further, if the client later went to a private attorney to enforce the now collectible attorney fee and collects the attorney fee, the legal aid client is unjustly enriched by having had the service rendered free and by pocketing the money.

The equities of the situation appears to favor an arrangement by which legal aid clients agree in advance, that if awarded attorney's fees become collectible, they grant authority to the Legal Aid Society to collect and retain those fees for the further use of the Legal Aid Society.

At the present time, an analogous situation exists within state government where a recoveries department of the attorney general's office enforces child support and alimony orders in connection with payments made by the welfare department to welfare recipients, which funds are returned to the welfare department.

The second question appears more difficult from a policy standpoint. Certainly the service, once begun as a Legal Aid service, requires that the Legal Aid attorney not abandon

the client simply because the client has become able to pay for the service. To do this would be to violate Canon 2 of the Code of Professional Responsibility dealing with duties to clients, and may also be in violation of the Utah Rules of Civil Procedure and the district court rules, if a withdrawal is sought to be effected without court permission.

On the other hand, the client has become one for whom Legal Aid cannot justifiably perform the service, since the client is no longer entitled to continued free legal services.

No difficulty is perceived in those instances where the client can pay only a token fee or a partial fee, if those funds become the funds of the Legal Aid Society for further use by the Society. This would be similar to the first situation discussed. In those instances, a private attorney could not be expected to handle the matter and it would be untenable to require the Legal Aid Society to solicit an attorney on behalf of the client, who would accept a partial fee, and then ask the client to accept that attorney so that Legal Aid might withdraw from representation.

On the other hand, if the client becomes able to afford a private attorney, clearly the Legal Aid client should be encouraged to engage private counsel, and every effort should be made to place such a client in the private sector, even to the extent of securing permission of the client to associate a private attorney who is to be compensated, in the event the client wants the Legal Aid Society attorney to continue in the matter.

Obviously, if the Legal Aid client who becomes capable financially of paying in full for services, refuses to go to private counsel simply to avoid paying attorney fees at all, then the Legal Aid Society attorney should take the steps necessary to withdraw from the case with court approval, specifying the reasons.

We conclude that the answer to question (1) is "yes" and as to question (2) the answer is a qualified "yes."

Rule Cited:

Canon 2