



## ETHICS ADVISORY OPINION

**08-01**

UPON THE REQUEST OF A MEMBER OF THE SOUTH CAROLINA BAR, THE ETHICS ADVISORY COMMITTEE HAS RENDERED THIS OPINION ON THE ETHICAL PROPRIETY OF THE INQUIRER'S CONTEMPLATED CONDUCT. THIS COMMITTEE HAS NO DISCIPLINARY AUTHORITY. LAWYER DISCIPLINE IS ADMINISTERED SOLELY BY THE SOUTH CAROLINA SUPREME COURT THROUGH ITS COMMISSION ON LAWYER CONDUCT.

### **Factual Background:**

Attorney undertakes a federal litigation case pursuant to fee agreement that requires the client to maintain a minimum retainer amount. Client's retainer amount falls below this minimum, and lawyer demands that client replenish retainer. However, client is unable to replenish retainer or pay outstanding bill. Attorney and client execute written agreement discharging attorney from representation of client. Attorney notifies all opposing counsel and circulates a consent order. Attorney submits consent order to judge who advises that he will only relieve attorney upon motion and hearing. Client is served with discovery requests, and his deposition is noticed. The motion to be relieved as counsel has been filed, and no hearing date has been set.

### **Question Presented:**

What is attorney's obligation to represent client in responding to discovery requests and depositions and hearings?

### **Summary:**

Rule 1.16(c), South Carolina Rules of Professional Conduct (SCRPC), requires a lawyer to have permission of the appropriate tribunal before terminating representation. Until such relief is granted, the lawyer is obligated to provide competent representation.

### **Opinion:**

Rule 1.16(c), SCRPC, provides that a lawyer obtain permission of the appropriate tribunal before terminating representation:

A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

In *Ex Parte Strom*, 343 S.C. 257, 539 S.E.2d 699 (2000), the South Carolina Supreme Court held that a court order is required to relieve a lawyer as counsel of record pursuant to Rule 11(b), South Carolina Rules of Civil Procedure (SCRCivP). See also *Culbertson v. Clemens*, 322 S.C. 20, 471 S.E.2d 163 (1996). Thus, the lawyer may not withdraw from representation until given permission by the court. While the Committee does not address questions of law, Federal Local Rule 83.I.07 is consistent with Rule 11(b), SCRCivP, and requires that an attorney obtain leave of the court before his or her name may be stricken from the record. Notwithstanding the doctrines of federal pre-emption and abstention, the Committee advises that the dictates of *Ex Parte Strom* control the lawyer's obligation to the client.

Accordingly, the scope and allocation of authority contemplated by Rule 1.2, SCRPC, are subject to Rule 1.16(c) that requires permission of the appropriate tribunal before terminating representation. It is the opinion of the Committee that the lawyer must continue to provide competent representation to the client until relief is given by the court. To the extent possible, the lawyer may request extensions of time for responses to discovery requests or postpone depositions. However, under these circumstances, the lawyer is not relieved of his or her obligation to the client until permission is granted by the court.