
E-96-2 Attorney's responsibilities when client cannot be located

Question

We represent a personal injury plaintiff whom we are unable to contact. We have pursued numerous leads in an effort to learn our client's whereabouts to contact him, all of which have proven unsuccessful. What are our responsibilities under these circumstances?

Opinion

The duties of communication and consultation and the duty to follow a client's instructions depend upon knowing a client's whereabouts and how to contact him or her. See SCR 20:1.2(a) and 20:1.4; *Olfe v. Gordon*, 93 Wis. 2d 173, 286 N.W.2d 573 (1980) (lawyer has general duty to follow specific instructions of client). The committee agrees with ABA Informal Opinion 1467 (Aug. 10, 1981) that a lawyer should make "reasonable inquiry and effort" to learn a client's whereabouts. What is reasonable will vary depending upon the circumstances. If efforts to contact the client are unsuccessful, the lawyer may have no alternative but to seek to withdraw from representation under SCR 20:1.16, taking "steps to the extent reasonably practicable" to protect the client's interests. See SCR 11.02; *Sherman v. Heisler*, 85 Wis. 2d 246, 270 N.W.2d 397 (1980). Whether this requires the lawyer to file a lawsuit on behalf of the client (and thereby satisfy the statute of limitations) may also depend upon the circumstances. In many circumstances involving a client whose whereabouts are unknown, such filing may be the most cautious course to follow.