
**E-84-11 Ethical obligations with heavy workload
in State Public Defender Office**

Facts

Full-time staff lawyers in a state public defender office have no direct control of their caseloads, as do many private lawyers who may seek business or turn down proffered employment, but instead must accept cases assigned by supervisors. Because of various political pressures, supervisors may be forced to attempt to reduce costs and/or increase productivity, which results in increased caseload pressures for staff lawyers. Three questions have been posed with regard to a lawyer's obligations in such a situation.

Question

1. What are the obligations of a lawyer employed by a state public defender office when supervisors increase workload to a point where the lawyer may not be able to provide adequate representation for his or her clients?

Opinion

When faced with a workload that makes it impossible for a lawyer to prepare adequately for cases and to represent clients competently, the staff lawyer should, except in extreme or urgent cases, decline new legal matters and should continue representation in pending matters only to the extent that the duty of competent, nonneglectful representation can be fulfilled. *See* Wisconsin Supreme Court Rule 20.32; *cf.* ABA Formal Opinion 347 (December 1, 1981) (legal services office lawyers should retain only those matters that can be handled in a competent, non-neglectful manner). In addition to declining new legal matters, a lawyer should withdraw from a sufficient number of matters to permit proper handling of the remaining matters. A lawyer who attempts to continue responsibility for substantially more matters than the lawyer can competently handle violates SCR 20.32(2) and (3). *See* ABA Formal Opinion 347.

Question

2. May a lawyer in a supervisory capacity ethically increase the workloads of subordinate lawyers when the supervisor is aware that the increased workload is unmanageable?

Opinion

Supervisors in a state public defender office may not ethically increase the workloads of subordinate lawyers to the point where the lawyer cannot, even at personal sacrifice, handle each of his or her clients' matters competently and in a non-neglectful manner. SCR 20.32; *see* ABA Informal Opinion 1359 (June 4, 1979). Although supervisors are not required to institute a system of priorities or waiting lists, such may be necessary to avoid a violation of SCR 20.32. *See* ABA Informal Opinion 1359.

Question

3. What are a staff lawyer's responsibilities to current clients in the event that the lawyer is terminated or resigns from his or her position with a state public defender office?

Opinion

For an answer to this question, the committee recommends reading Formal Opinion E-80-18, Wis. Bar Bull., June 1984, at 69.

Please note that "impossible" and "unmanageable" are subjective standards that may vary depending upon the individual circumstances involved.