
E-91-3 State Public Defender Office workload

Question

Assuming that a supervising attorney in the Public Defender's Office increases the workload of a staff attorney in excess of caseload standards approved by the State Bar Board of Governors, or some other nongovernmental body, and the staff lawyer declines new matters, may the supervising attorney ethically sanction the lawyer either by terminating the lawyer's employment, withholding compensation or changing the lawyer's responsibilities by transfer?

Opinion

This committee addressed this general question in formal opinion E-84-11, which we reaffirm. However, since 1984 the Wisconsin Supreme Court has repealed and recreated SCR Chapter 20. Although these rule changes do not appear to alter the substance of E-84-11, they justify revisiting the issues raised by the question presented.

Public defender lawyers should consider the following Supreme Court Rules when determining how to respond to the caseload problem: SCR 20:1.1 (competence); SCR 20:1.7(b) (limitations on a lawyer's ability to represent a client); SCR 20:2.1 (exercise of independent professional judgment); SCR 20:5.1 (responsibilities of a partner or supervisory lawyer); and SCR 20:5.2 (responsibilities of a subordinate lawyer).

Regarding the specific question posed, this committee cannot address issues of employment relations; however, as indicated in formal opinion E-84-11, we believe that exceeding recognized maximum caseload standards or imposing such standards on a lawyer that would not allow the lawyer to conform to the Rules of Professional Conduct, particularly SCR 20:1.1, SCR 20:1.3 and SCR 20:1.7(b), could result in a violation of disciplinary standards if such was imposed or required by law. SCR 20:8.4(f).

A disciplinary agency confronted by circumstances described in the question must evaluate each situation on a case-by-case basis. Recognized caseload standards for attorneys, which are promulgated by bar associations or other nongovernmental bodies, are factors that should be considered by disciplinary

agencies considering such situations as “guides to determining what is reasonable.” *Strickland v. Washington*, 466 U.S. 668, 688 (1984); *Nix v. Whiteside*, 475 U.S. 157, 165-66 (1986).