INDIANA STATE BAR ASSOCIATION
LEGAL ETHICS SUBCOMMITTEE

OPINION NO. 1 of 1978

Lawyer Must Not Delay Obtaining Dissolution Of Marriage Case Until Fee Paid In Full

The Subcommittee was asked by an attorney employed by a county Legal Aid Office about the ethical considerations of the practice of some domestic relations attorneys of refusing to finalize dissolutions, refusing to with-draw from dissolution cases, and refusing to turn over dissolution files to Legal Aid Offices or any other attorney retained by the client. This practice most often occurs when an attorney is representing the wife in a dissolution
action and under one of the following three factual circumstances:

1. Where the wife has funds, income or independent means with
which to pay her own attorney fees, but fails or refuses to
pay.

2. Where the husband has property or income or means of paying
the attorney fees and a provisional order has been obtained
but where the husband has failed or refused to pay the attorney fees of the wife's attorney.

3. Where, after the institution of the action, it is discovered
that the wife in indigent and the husband is or becomes un-collectible.

The first question asked by the Legal Aid attorney is:

"Is an attorney ethically able to postpone completion of a case,
specifically a dissolution, only because his/her fees have not
been paid? If so, how long?"

Assuming that a contract of employment and a contract for fees have been entered into, and the client willfully fails to pay as provided in the contract, then Disciplinary Rule 7-101 is applicable.

Disciplinary Rule 7-101 (A) (2) provides:

A lawyer shall not intentionally fail to carry out a contract of
employment entered into with a client for professional services,
but he may withdraw as permitted under DR Z-110.