COMMISSION ON LEGAL COUNSEL FOR INDIGENTS
POLICY ON WITHDRAWAL

It is the Policy of the Commission that an attorney should move to withdraw from representing a party in a matter when appropriate. When an attorney moves to withdraw from representation of a party, the attorney should provide a copy of the motion and any supporting documents on the Commission at the Valley City office at the same time it is served on the court and opposing counsel. The attorney should also provide a copy of the court's order to the Commission, within three days of receipt.

Appropriate times to withdraw from representation include, but are not necessarily limited to:

1. When the attorney has made an appearance on behalf of the client, and thereafter discovers that an actual conflict of interest prohibits representation of the client, the attorney should first submit a conflict form to the Commission so that another attorney can be assigned to the matter, and a substitution of counsel submitted with the motion to withdraw. If the attorney has not yet made an appearance on behalf of the client, the attorney should submit an Attorney Conflict form to the Commission for reassignment of the case to alternative counsel; no motion to withdraw is required.
2. When the attorney has determined that he or she is not otherwise ethically able to represent the client, the attorney should first submit a conflict form to the Commission so that another attorney can be assigned to the matter, and a substitution of counsel submitted with the motion to withdraw. If the attorney has not yet made an appearance on behalf of the client, the attorney should submit an Attorney Conflict form to the Commission for reassignment of the case to alternative counsel; no motion to withdraw is required.
3. When the client has failed to maintain contact with the attorney. Should a party fail to appear in court so that a bench warrant is issued for the arrest of the party, and the party

does not have contact with the attorney within a reasonable time thereafter, the attorney should move the court to withdraw from representation.

4. When the client has made it impossible to provide representation due to the client's conduct, the attorney should file a motion to withdraw. When a motion to withdraw is filed, the attorney should request a hearing before the court so that the court may determine whether the defendant's conduct is the functional equivalent of a voluntary wavier of the right to counsel, as set forth in State v. Dvorak, 2000 ND 6, 604 N.W.2d 445, State v. Harmon, 1997 ND 233, 575 N.W.2d 635, and cases discussed therein.

5. When the client has filed an ethical complaint with the disciplinary board about the attorney, the attorney should file a motion to withdraw. When a motion to withdraw is filed, the attorney should request a hearing before the court so that the court may determine if the client's conduct is a functional equivalent of a voluntary waiver of the right to counsel, whether alterative counsel should be assigned, or whether the attorney should remain as the attorney on the case assignment.

6. When the case assignment has terminated and a motion to withdraw is required under the Rules of Court or the practices in a particular jurisdiction.