

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinions

Opinion #177 - 3/1/71 (66-70)

Topic: Duty of an Attorney to Report Misconduct of Another Attorney to the Proper Authority.

Digest: An attorney should disclose to the proper authorities information of improprieties concerning another lawyer.

Code*: EC 1-4
DR 1-102(A), 1-103(A)

QUESTION

Does the attorney for a beneficiary of an estate have a duty to notify the appropriate authorities that the executor (an attorney) has admitted to certain misconduct in handling the assets of the estate?

OPINION

EC 1-4 states that a lawyer should reveal voluntarily to the proper officials all unprivileged knowledge of conduct of lawyers which he believes clearly to be in violation of the disciplinary rules. The integrity of the profession can only be maintained if misconduct of lawyers is brought to the attention of such authorities. See DR 1-102(A) and DR 1-103(A).

Opinion #178 - 3/1/71 (1-71)

Topic: Withdrawal from Employment.

Digest: An attorney retiring from the practice of law may not withdraw from a litigation without the client's consent except with permission of the Court.

Code*: DR 2-110(A), (B) and (C).

QUESTION

Must an attorney who decides to retire from the practice of law and who represents a party in a litigation seek permission from the Court to withdraw or may he simply return the file to his client and advise the client to engage another attorney?

OPINION

DR 2-110(A) provides as follows with respect to the subject of withdrawal from employment:

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"(A) In general.

- "(1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.
- "(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.
- "(3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned."

Once an attorney accepts employment in a litigation matter, he is not at liberty to withdraw at will. Circumstances must exist making it either mandatory for him to withdraw or giving him the right to withdraw. Such circumstances are set forth in DR 2-110(B) and (C). If the client does not assent to the withdrawal of the attorney in a litigated action, permission of the Court to withdraw should be sought. This is required in order that the Court may determine whether the attorney has a right to withdraw over the client's objection and, if the Court determines that the attorney has such right, in order that appropriate arrangements may be made to protect the client's interests until other counsel is retained.

Opinion #179 - 3/1/71 (7-71)

Topic: Delegation of Professional Functions.

Digest: Professional functions cannot be delegated to a client.

Code*: EC 3-6.

QUESTION

May a lawyer permit a client to use the lawyer's letterhead and affix the lawyer's name in sending out a standard series of collection letters prepared by an attorney.

OPINION

A lawyer may not delegate any professional functions or powers to his client (ABA 85 (1932); N.Y. County 102 (1916); N.Y. County 300 (1932)).

Counsel may not allow a collection department of a corporation to use his letterhead (ABA 68 (1932); N.Y. City 458 (1938); nor may a lawyer permit a collection agency to sign the attorney's name in making collections (N.Y. City 89 (1928)).