

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinions

2-102, 2-103, 2-104, 2-105, 3-101, 3-102, 3-103, and 5-101(A), and should always bear in mind that Canon 9 provides that "a lawyer should avoid even the appearance of professional impropriety."

Opinion #207 - 10/26/71 (24-71)

Topic: Duty of lawyer to disclose information concerning client to governmental agency.

Digest: Unless fraud is involved, lawyer has no affirmative duty to disclose information to governmental agency.

Code* DR 7-102(B) (1)

QUESTION

Does a lawyer for an executor of an estate have an affirmative duty to communicate on his own initiative information concerning a welfare recipient's interest in the estate to the Welfare Department of another state where the beneficiary resides after the lawyer has disclosed such information in an application he helped prepare for the beneficiary?

OPINION

Mere suspicion of impropriety of the beneficiary or of possible laxity on the part of the welfare agency in pursuing its remedies does not require a lawyer to affirmatively, on his own initiative, communicate facts to the welfare agency that may bear upon the status of the welfare recipient. However, if the lawyer has reason to believe that the beneficiary withheld information required by law to be furnished by the beneficiary to the welfare department, the lawyer should supply such information after giving the beneficiary the opportunity so to do.

DR 7-102(B) (1) provides that a lawyer who receives information clearly establishing that:

"His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal."