



Committee on Professional Ethics

Opinion #332 - 3/21/74 (5-74)

Topic: Lawyer's statement respecting open court stipulation; confidences and secrets of client.

Digest: Since open court stipulation is not a confidence or secret, lawyer may properly provide opposing party with statement as to facts constituting stipulation.

Code: Canon 1, 4
EC 9-6
DR 4-101(A), 7-102(B)(1)

QUESTION

May a lawyer, one of whose clients has repudiated an oral stipulation personally made by that client in open court, which stipulation resulted in the discontinuance of a pending action against a second client, provide the opposing party in the discontinued action with a sworn statement as to the facts constituting the stipulation?

OPINION

The facts submitted with the request for our opinion may be summarized as follows: The lawyer represented a corporate defendant in a litigated matter. The president of the corporate defendant, who appears not to have been a party to the action, is also a client of the lawyer. In reliance on an open court stipulation personally made by the corporation's president, the action against the corporation was discontinued. By the stipulation, the president stated that he would assume personal responsibility for payment of the corporate obligation forming the basis of the suit by executing a series of notes and a confession of judgment. Subsequently the president repudiated his personal undertaking and refuses to sign the notes and confession of judgment. The opposing party has requested the lawyer to provide him with a sworn statement as to the facts constituting the stipulation.

Drinker, Legal Ethics 75 (1953) quotes with approval the classic statement from People v. Beattie, 137 Ill. 553, 574 (1891):

"The lawyer's duty is of a double character. He owes to his client the duty of fidelity, but he also owes the duty of good faith and honorable dealing to the judicial tribunals before whom he practices his profession."

The lawyer's duty of fidelity to his client and his obligation to preserve the confidences and secrets of his client does not justify his withholding the giving of the requested statement, even though it may be used against a client. Cf. DR 7-102(B)(1). What happens in open court cannot be treated as either a confidence or secret of the client within

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the meaning of Canon 4 or DR 4-101(A). No client has the right to have his lawyer withhold or suppress evidence as to events which have taken place in open court.

The lawyer's obligation to uphold the integrity and honor of his profession and to encourage respect for law and for the courts (Canon 1; EC 9-6) makes it proper for him to provide the opposing party with the statement here requested as to what happened in open court. Cf. N.Y. County 394 (1950). The statement may not, however, extend to other matters which the lawyer is obligated to treat as a confidence or secret under Canon 4.
