



Committee on Professional Ethics

Opinion #407 - 8/28/75 (62-75)

Topic: Failure to respond to another attorney's telephone calls or correspondence.

Digest: Improper for lawyer as a course of conduct to fail to respond to another attorney's telephone calls or correspondence.

Code: EC 7-10, 7-37, 7-38, 7-39.

QUESTION

Does a lawyer who regularly fails to respond to telephone calls and correspondence from other attorneys as a course of conduct act improperly?

OPINION

The consistent failure of a lawyer to respond to telephone calls and correspondence from fellow attorneys is in violation of the Code. See EC 7-10, EC 7-37, EC 7-38, EC 7-39. A lawyer is obligated to return telephone calls and inquiries from fellow members of the Bar, as well as from clients. See N.Y. State 396 (1975).

Commensurate with that duty it is the duty of the lawyer to remain aware of reasonable requests made by his adversary concerning adjournments, stipulations, limitation of issues, in order that the administration of justice should be fairly, equitably and speedily concluded. EC 7-10 in substance states that a lawyer has a duty, concurrent with his obligation to represent his client, to treat with consideration and courtesy all persons involved in the legal process. Unquestionably, within the confines of that consideration is the obligation to return telephone calls to lawyers for whatever purpose the call may have been made, provided that calls are not made in an overburdening number by the adversary.

EC 7-37 again requires a lawyer in adversary proceedings to treat other lawyers with courtesy, respect and dignity required to maintain the proper appearance and professionalism of the Bar.

EC 7-38 sets forth the criteria under which a lawyer must be courteous to opposing counsel and to give consideration to reasonable requests of opposing counsel for adjournments, stipulations, information all of which would aid in the administration of justice without doing prejudice to the right of his client. A caveat should be noted that the lawyer must follow or should follow local customs of courtesy or practice except wherein he informs opposing counsel that he will not follow that customary local practice.

EC 7-39 sets forth that proper functioning of the adversary system depends upon consideration between lawyers and tribunals and

utilizing procedures which will preserve the impartiality of tribunals and make their decisional processes prompt and just, without impinging upon the obligation of lawyers to represent their clients zealously within the framework of the law. See generally, Drinker, Legal Ethics 192-198 (1953).
