

You advise that you were retained by X to obtain a divorce from his second marriage. The property settlement was prepared, depositions taken and a final decree prepared. However, while at the courthouse on another matter, you checked to see if the commissioner's report had been filed in the case. Not having the chancery number, you looked up the number and discovered two chancery numbers and a divorce decree that was entered for the same individual from his first wife in April of 1986, which was one year and four months after his second marriage took place. You informed X of this information and X stated that he had obtained a divorce overseas, had not received the divorce papers, and therefore had filed for a divorce in this country to appease his second wife, who was not aware of a previous marriage until after their marriage had taken place. You then noticed that X stated on the second marriage license that it was his first marriage. You advised X to obtain the divorce papers from the overseas country as soon as possible; he never produced the papers.

You then met with the circuit court judge to whom the case was assigned and advised the judge of the situation. He advised you to take no further action in the matter and to notify the opposing attorney at once. You sent the opposing attorney a letter outlining the above situation in January, 1988 and to this date have received no response.

X has now retained another attorney to obtain his second divorce. You state that you are reluctant to sign a withdrawal of counsel order, since you feel that the point is moot and may constitute a fraud on the court.

You wish to know whether or not you must withdraw from the case and also what your responsibility is to the commissioner in chancery who oversaw the depositions. You wish to know whether it is your ethical duty to advise the commissioner of the situation since you believe he based his report on incomplete information.

With regard to your first question, DR:2-108(A)(3) states that "except as stated in paragraph (C), a lawyer shall withdraw from representing a client if the lawyer is discharged by the client." The Committee believes you should withdraw as counsel since your client has hired another attorney.

Disciplinary Rule 4-101(D)(2) [DR:4-101] states that "a lawyer shall reveal information which clearly establishes that his client has, in the course of the representation, perpetrated a fraud related to the subject matter of the representation upon a tribunal. Before revealing such information, however, the lawyer shall request that his client advise the tribunal of the fraud. Information is clearly established when the client acknowledges to the attorney that he has perpetrated a fraud upon a tribunal." As far as the second divorce is concerned, any fraud which may have been committed by your client has not been acknowledged as such by your client. It would therefore be improper, under DR:4-101(D)(2), for you to advise the commissioner in chancery of this information.

The Committee therefore directs you to DR:4-101(B)(1) and (B)(2), which states that "except as provided by DR:4-101(C) and (D), a lawyer shall not knowingly (1) reveal a confidence or secret of his client or (2) use a confidence or secret of his client to the disadvantage of the client." DR:4-101(A) defines "confidence" as information protected under applicable law and "secret" as information gained in the professional relationship

which the client has requested be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client." Ethical Consideration 4-6 provides that "the obligation by a lawyer to preserve the confidences and secrets of his client continues after the termination of his employment."

Based upon the above cited disciplinary rules, the Committee opines that it would be improper for you to inform the commissioner in chancery of the information you have learned concerning your client's first divorce.

Committee Opinion
May 20, 1988