

You have presented a hypothetical situation in which a court appointed attorney represents a defendant on a personal recognizance bond for two charges. The two offenses are docketed for trial on the same date and time and the court arraigns only on one charge. The disposition is favorable to the client and the court discharges the defendant. In order to obtain payment for the attorney's services, the attorney must submit a standard "Time Sheet" stating the number of charges. The completed form is then submitted to the judge for his signature, at which time the judge would see the two charges and request the defendant be returned to court to stand trial on the second charge. You have asked two questions regarding the above hypothetical which the Committee will address in the order in which you have presented them in your inquiry.

I. Is the defense attorney under an affirmative obligation to inform the court that it has overlooked the second charge, or is defense counsel ethically required not to inform the court of the omission? If the defendant had been in pretrial confinement on account of the omitted charge, would the answers to these questions differ?

Disciplinary Rule 7-101(A)(3) [DR:7-101] provides that a lawyer shall not intentionally prejudice or damage his client during the course of the professional relationship, except as required under Canon 4.

In addition the Committee believes that the information in question is a matter of public record, as well as a matter for consideration before the court. Therefore, it cannot be argued that defense counsel is attempting to conceal or deliberately failing to disclose that which he is required by law to reveal pursuant to DR:7-102(A)(3).

The Committee would opine that defense counsel is not under any affirmative obligation to reveal that the court has overlooked his client's second criminal charge, even if the client had been in pretrial confinement because of that charge, unless the client requested that he inform the court of the omission. Under DR:7-101(A)(3), it would be unethical for an attorney to reveal information that would prejudice or damage his client.

II. Is the attorney ethically required not to submit the "Time Sheet" or, in the alternative, only to submit the request for payment for the prorated amount due on the charge which was tried to avoid prejudicing his client's interest?

Whether the defense counsel is required to submit a "Time Sheet" is a legal question which is beyond the purview of this Committee. However, the Committee would opine that if a "Time Sheet" is submitted for the payment of attorney's fees, the attorney's time should reflect the amount due on the charge that was tried. It would be improper for an attorney to enhance the "Time Sheet" by including any amount of the attorney's time on a case which had not been concluded. (See DR:7-101(A)(3) and DR:7-102(A)(5) and (6))