

You have informed the Committee that a client charged with DUI under the name “Richard Rowe” has come to an attorney and informed the attorney that he actually is “John Doe” and that he has been declared an habitual offender. The client has further told the attorney that, after having been declared an habitual offender, he obtained another driver's license under the name “Richard Rowe” using the real Richard Rowe's social security number when, in fact, the real Richard Rowe now lives somewhere in the Midwest. Furthermore, the client indicated that he is afraid to reveal his true identity to the court because he would then be charged with two additional crimes, including a felony with a mandatory prison sentence. Finally, you advise that the client understands that he may not testify and thereby perjure himself, but would prefer to stand mute during the proceedings, enter no plea and exercise his constitutional right to remain silent at trial rather than incriminate himself on the two additional crimes.

You have asked the Committee to opine as to your ethical obligations under the circumstances, in light of the applicable disciplinary rules and the client's constitutional rights not to incriminate himself. The appropriate and controlling rules to the circumstances you have described are DR:4-101(D)(2) and DR:7-102(A)(7).

The former mandates that a lawyer *shall* reveal a client's “confidence” (information protected by the attorney-client privilege under applicable law) or “secret” (other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client) when the lawyer has information which clearly establishes that his client has perpetrated a fraud upon a tribunal (when the fraud is related to the subject matter of the representation). (emphasis added) The mandate also requires, however, that before revealing such information, the lawyer shall request that his client advise the tribunal of the fraud. Disciplinary Rule 7-102(A)(7) requires that a lawyer shall not counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.

The Committee has earlier opined that a court appointed attorney was obliged to inform the court of his client's true identity and past criminal record, when the client refused to do so after having perpetrated a fraud upon the court. The facts of that opinion indicated that the attorney represented the client on a felony indictment in one jurisdiction and subsequently learned, prior to representing him on a similar indictment in a second jurisdiction, that his client's true identity was in fact different from the name under which he had been tried in the first case. (See LE Op. 350)

Similarly, in the facts you have presented, the Committee is of the opinion that a lawyer may not, by omission or commission, permit the court to believe his client's true identity is “Richard Rowe” since to do so would violate both DR:4-101(D)(2) and DR:7-102(A)(7). The Committee is further of the opinion that should you be permitted by the court to withdraw from representation of “Richard Rowe/John Doe” (under the provisions of DR:2-108(D)), you would be under no obligation to reveal his dual identity since that information would be protected as a secret. If, however, (a) the client has been arraigned under other than his true name, or (b) he responds to the court's inquiry as to his name during the initial formalities of the proceeding, or (c) you respond so on his

behalf, the Committee believes that it is clear such action would constitute a fraud on the court. Therefore, the Committee opines that, in the event that you continue to represent the client, it would be improper to permit him to perpetrate a fraud on the court or to assist him in such perpetration. To avoid such improper conduct, therefore, you should first request that the client advise the court of his true identity and, should the client refuse to do so, you have an affirmative obligation to reveal the fraud to the court.

Committee Opinion
May 8, 1990