

You have presented a hypothetical situation in which an attorney serves as house counsel for an insurance company. As such, the attorney has been designated to defend an individual client in a personal injury cause of action wherein the plaintiff alleges that he was permanently injured as a result of the automobile accident. You state that liability is rather clear in that the accident occurred when the client, who was the operator of a truck, apparently made a left turn in front of the plaintiff, who was the operator of a motorcycle coming from the opposite direction. The plaintiff's treating physician and the physician who examined him pursuant to an independent medical examination [IME] have both opined that the plaintiff suffers from a permanent partial disability as a result of the accident.

The plaintiff has identified himself as "A" in the style of the motion for judgment. In response to one of house counsel's interrogatories, however, the plaintiff has identified himself as "[A], a/k/a [B]" and indicated that his social security number (SSN) is "X". You state that there is absolutely no similarity between name A and name B. Further, you state that subpoenaed records from one of plaintiff's prior employers indicate that the plaintiff was known only as B and that his SSN was "Y", a number completely different from X.

You indicate that when the attorney initially inquired of the plaintiff, during his oral deposition, as to why he is known by two completely dissimilar names, the plaintiff refused to answer pursuant to his counsel's instruction. However, pursuant to an order of court that he answer that inquiry, the plaintiff indicated to the attorney at a subsequent deposition that his legal name is B and that he only assumed name A after he lost his license to operate a motor vehicle in Virginia following several convictions for driving under the influence (DUI). The plaintiff indicated that, in this way, he could continue to operate a motor vehicle. A perusal of the plaintiff's Virginia driver's license indicated that his name was A and that his SSN was X.

The attorney then asked plaintiff how he had obtained a driver's license indicating name A and incorrect SSN X. The plaintiff stated that subsequent to losing his driver's license, he applied for another driver's license from the Division of Motor Vehicles using name A, which had been the legal name of a deceased relative, and SSN X, which had been the correct SSN of another deceased relative. Further complicating matters, the plaintiff indicated that he had recently been charged with several traffic offenses, including a DUI, while carrying the false driver's license and that he had appeared in court to answer these charges under assumed name A and incorrect SSN X.

Finally, you advise that, immediately following this deposition, plaintiff's counsel approached the attorney with an offer to settle the matter for mere nuisance value in exchange for an agreement by the attorney not to inform the proper authorities of the circumstances of the plaintiff's false driver's license or of plaintiff's recent appearances in traffic court under his assumed name A. The attorney told plaintiff's counsel that he would agree to do nothing at that time and the matter was continued generally on the court's docket.

You have asked the Committee to opine whether, under the facts of the inquiry, it is proper for the attorney to advise his client to settle for nuisance value pursuant to an

agreement by the attorney not to inform the authorities of the circumstances of plaintiff's false identity or of plaintiff's appearances in traffic court under that assumed name. You also inquire whether the attorney would violate his fiduciary duty to his client if he does not advise his client to settle on the plaintiff's terms.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:7-102(A)(3), (7) and (8) which state that a lawyer shall not conceal or knowingly fail to disclose that which he is required by law to reveal, shall not counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent, and shall not knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule; and DR:7-102(B)(1) which mandates that a lawyer who receives information clearly establishing that a person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

The Committee opines that since the plaintiff has admitted his use of a false name and SSN at both a deposition and appearances in traffic court, the attorney has received information clearly establishing that fraud has been committed upon tribunals. See LE Op. 1451 (depositions are included within the definition of "tribunal"). Thus, the Committee is of the opinion that it is incumbent upon the attorney to promptly reveal the fraud to the tribunal under the mandate of DR:7-102(B)(1). See also LE Op. 1331 (lawyer may not, by omission or commission, permit the court to believe his client's true identity is a false name assumed by the client).

Finally, the Committee is of the view that the attorney does not violate his fiduciary duty to his client by advising him not to settle according to the plaintiff's terms. By counseling him not to enter into a potentially illegal agreement, the attorney acts in a manner consistent with the best interests of the client and with his duty to the legal system. See EC:7-16.

Committee Opinion  
October 19, 1992