

You have presented a hypothetical situation in which a Commonwealth's Attorney urges to the Circuit Court that defense counsel is required to notify the prosecutor and/or the Court when a client, admitted to bail but subject to incarceration, has exhausted or abandoned appellate rights.

You have asked the Committee to opine whether, under the facts of the inquiry, a defense counsel has any ethical obligation to inform opposing counsel or the court when appellate efforts cease for a client sentenced to incarceration but at liberty pending appeal.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:7-101(A)(3) which states that a lawyer shall not intentionally prejudice or damage his client during the course of the professional relationship, except as required under DR:4-101(D); and DR:7-102(A)(3) which states that a lawyer shall not conceal or knowingly fail to disclose that which he is required by law to reveal.

The Committee has consistently and repeatedly opined that an attorney may not reveal information to the court to the detriment of his client. *See* LE Op. 1186, LE Op. 1215, LE Op. 1400. Cf. DR:4-101(C) and (D).

The Committee is of the opinion that defense counsel is not under any affirmative obligation to reveal that his client, admitted to bail but subject to incarceration, has exhausted or abandoned his appellate rights, unless the client has requested that the attorney so inform the prosecutor and/or the court. Absent such a request, the Committee opines that it would be improper, under DR:7-101(A)(3), for the attorney to reveal the information.

The Committee further believes that since the information in question is readily available to the prosecutor and/or the court, defense counsel is not engaging in attempting to conceal or deliberately failing to disclose that which he is required by law to reveal pursuant to DR:7-102(A)(3).

Committee Opinion  
October 19, 1992