

You have presented a hypothetical situation in which a Virginia attorney has corresponded with a local General District Court regarding whether a judge's markings on the back of an arrest warrant for a third DUI amount to a conviction (there being no judge's signature and no reference to guilt or innocence, although an apparent sentencing disposition was written by someone on the back of the arrest warrant). The existence or nonexistence of a valid conviction would have great implications for the restoration of the client's driving privileges.

You indicate that a judge of the court in question mails back a letter to counsel regarding the inquiry and apparently, inadvertently includes the original document that was the subject of the inquiry (i.e., the warrant of arrest, with the reverse section for the judge's findings).

You have asked the committee to opine under the facts of the inquiry:

- (1) whether counsel is under an ethical obligation to return the court record of the putative conviction to the court;
- (2) whether, if counsel is not so obligated, counsel may give the original court record to his client, without advising him as to what to do with it;
- (3) whether, if counsel is able to either keep the record or give it to his client, counsel may ethically present in a petition or pleading to the court a motion to the effect that since no record of conviction exists at the court, the court should advise the Division of Motor Vehicles, such that the conviction is deleted from the driver's record; and
- (4) whether, if counsel must return the record to the court, counsel may wait to do so until such time as the document becomes relevant to court proceedings, i.e., the point at which the argument is raised as to whether the back of the warrant indicates a conviction.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:7-101(A)(3) which provides 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); DR:7-102(A)(3), (7), and (8) which state respectively that a lawyer shall not conceal or knowingly fail to disclose that which he is required by law to reveal; counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent; or knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule; and DR:1-102(A) (3 and 4) which prohibit respectively a lawyer from committing a crime or other deliberately wrongful act or from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation any of which reflects adversely on the lawyer's fitness to practice law.

The committee responds to your inquiries relative to the facts presented as follows:

1. The committee is of the opinion that counsel must immediately return the court record of the putative conviction to the court. Thus, the committee believes that failure to return the record to the court would be in violation of DR:7-102(A)(3), (7), and (8). See also Va. Code Ann. § 18.2-111 and §§ 17-44, -45.

The facts indicate that the letter and warrant were sent to counsel. The committee, then, is of the opinion that it would be improper, and violative of DRs 1-102(A)(3) and (4), for counsel to use, without returning to the court the original warrant of arrest inadvertently sent.

Since the committee has opined as above, responses to your second, third, and fourth questions have been rendered moot.

Committee Opinion
April 11, 1994