

Committee Opinion
August 1, 1988

LEGAL ETHICS OPINION 1093

DUTY TO DISCLOSE FRAUD ON A
TRIBUNAL; DUTY TO REPORT
MISCONDUCT.

You advise that two attorneys served as counsel for a client charged with a felony. Attorney 1 was responsible for research and preparation, and Attorney 2 was responsible for the trial. Because Attorney 1 had less experience and competence in trying felonies, all decisions at trial were left to Attorney 2. After the trial, at which the defendant was convicted, the defendant informed Attorney 1 that Attorney 2 had instructed the defendant to lie on the witness stand. Attorney 1 was not aware that this advice had been given to the defendant.

You wish to know whether Attorney 1 has a duty to report the defendant's claim to the court. You also wish to know whether or not there is a duty to report the attorney's misconduct to the out-of-state bar to which Attorney 2 belongs.

DR:4-101(D)(2) provides that a lawyer shall reveal information which clearly establishes that his client has, in the course of the representation, perpetrated a fraud related to the subject matter of the representation upon a tribunal. Before revealing such information, however, the lawyer shall request that his client advise the tribunal of the fraud. Information is clearly established when the client acknowledges to the attorney that he has perpetrated a fraud upon a tribunal.

DR:7-102(A)(4) states that in his representation of a client, a lawyer shall not knowingly use perjured testimony or false evidence. DR:7-102(A)(7) states that in his representation of a client, a lawyer shall not counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent. DR:1-102(A)(1) states that a lawyer shall not violate a disciplinary rule or knowingly aid another to do so. DR:1-103(A) states that a lawyer having information indicating that another lawyer has committed a violation of the disciplinary rules that raises a substantial question as to that lawyer's fitness to practice law in other respects shall report such information to the appropriate professional authority, except as provided in DR:4-101.

Due to Attorney 1 being advised by the client that Attorney 2 instructed him to commit perjury, if the client actually committed perjury, then Attorney 2 must abide by the provisions of DR:4-101(D)(2).

Based upon DR:1-103(A), because Attorney 1 has obtained information indicating that Attorney 2 has violated a disciplinary rule, if Attorney 1 believes that such violation raises a substantial question as to that lawyer's fitness to practice law in other respects, the Committee opines that he has a duty to report this information to the appropriate authority. In this instance the Committee believes that the appropriate authorities would include both the Virginia State Bar and the out-of-state bar of which the attorney is a member.

Committee Opinion
August 1, 1988

Committee Opinion
August 1, 1988

Legal Ethics Committee Notes. – If information about the ethics violation is a client confidence, a lawyer may report the other lawyer's misconduct only if the client consents under Rule 1.6(c)(3); the lawyer considering whether to report must consult with the client under that Rule.