

Committee Opinion
October 18, 1988

LEGAL ETHICS OPINION 1140

BANKRUPTCY REPRESENTATION –
CONFIDENTIALITY – DISCLOSURE OF
CRIME/FRAUD: DUTY TO REVEAL
INFORMATION ESTABLISHING A
CLIENT HAS COMMITTED A FRAUD
ON A TRIBUNAL.

You stated that you represent a client in his action against his insurance agent and various insurance companies for breach of contract, fraud and negligent infliction of emotional distress. Prior to filing a motion for judgment for your client, you were aware that your client was forced into bankruptcy. Since then, however, it has come to your attention that your client may not have advised the trustee of the bankruptcy proceeding of the potential assets he could realize if he prevails on the cause of action you are representing him in. You submit that you were told by another lawyer that failure to report potential assets in a bankruptcy proceeding may be considered a fraud upon the court.

You want to know what effect his information has on your professional responsibilities with regard to representation of your client.

Whether your client's failure to report to the trustee of the bankruptcy case the potential assets from the cause of action in which you represent him is a fraud upon the court is a question of law beyond the purview of the Committee. If you determine this to be a fraud upon the court, DR:4-101(D) imposes an ethical obligation upon you to reveal that your client has perpetrated a fraud or intends to commit a crime related to the subject matter of the representation upon a tribunal, as well as the information necessary to prevent the crime. The disciplinary rule provides you must first advise your client of the possible legal consequences of his action; advise him that such action would constitute bankruptcy fraud; and advise the client that you must reveal a fraud and any criminal intention unless it is thereupon abandoned.

In addition, if the crime involves perjury by the client, you will advise him that you must withdraw as counsel. (See also, LE Op. 833)

Under the limited facts you have presented in your inquiry, the Committee opines that it is your obligation to reveal all necessary information in order to establish that the client has perpetrated a fraud upon a tribunal if the client does not abandon his actions in accordance with DR:4-101(D)(1) and (2).

Committee Opinion
October 18, 1988