

Committee Opinion
February 15, 1990

LEGAL ETHICS OPINION 1314

ATTORNEY-CLIENT RELATIONSHIP –
REPRESENTING CLIENT WITHIN THE
BOUNDS OF THE LAW: ATTORNEY
ADVISING CLIENT TO SIGN BLANK
MEDICAL AUTHORIZATION.

Your question arises out of a matter involving federal administrative practice. You have advised that, in representing a client, an attorney has exhausted federal administrative remedies and obtained a remand to Defendant Secretary of Health and Human Services from the United States District Court, pursuant to 42 U.S.C. § 405(g). Subsequent to the court's action, a federal administrative employee requested that Plaintiff sign blank authorizations for medical, psychological and psychiatric evaluations. You have requested that the committee consider the propriety of the attorney advising his client to sign such blank authorizations under the circumstances. You have stated that in your opinion a client should know in advance to which consultant he/she would be referred.

The Committee directs your attention to DR:7-101(A)(1), the appropriate and controlling rule relative to your inquiry, which provides in part that a lawyer shall not intentionally fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules. The rule states, however, that "a lawyer does not violate this Disciplinary Rule ... by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client" (emphasis added) In addition, DR:7-101(B)(1) provides that in representing a client zealously, a lawyer may exercise his professional judgment to limit or vary his client's objectives and waive or fail to assert a right or position of his client, with the express or implied consent of the client.

In the opinion of the Committee, the question of whether it is proper for an attorney to counsel his client to sign blank authorization forms for evaluation is a factual determination of competence, the lack of which may lead to a claim of malpractice. Such a determination is beyond the purview of this Committee. The Committee believes that the lawyer's duty of loyalty to the client requires the lawyer to protect and preserve the client's right to avoid compromising his/her independence in making decisions as to specifically which evaluations he/she chooses to allow. Thus, the attorney should be mindful of the need to advise the client of all consequences should he/she choose to sign blank authorizations.

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