

LEGAL ETHICS OPINION 1522

ATTORNEY MISCONDUCT -  
OBLIGATION TO REPORT  
MISCONDUCT – ZEALOUS  
REPRESENTATION - NONCLIENT  
FRAUD UPON A TRIBUNAL:  
ATTORNEY MISSTATING PURCHASE  
PRICE OF PROPERTY ON RECORDED  
DEED.

You have presented a hypothetical situation in which Seller acquires a parcel of commercial real property for \$250,000. Attorney A represents Seller in the acquisition and the subsequent sale of the commercial real estate. Purchaser is represented by Attorney B in all aspects of the sale transaction, including contract negotiation. The contract states that the purchase price is \$425,000. Purchaser provides funds to Attorney A as Seller's attorney for the \$425,000 transaction, based upon a settlement statement reflecting \$425,000 to be the purchase price pursuant to the contract.

You further indicate that Purchaser causes the deed to be recorded with the consideration being stated to the clerk as \$250,000. State grantor's tax pursuant to § 58.1-802 (formerly § 58-54.1) of the Code of Virginia, as amended, is paid on the \$250,000 stated consideration. You indicate that Attorney A then contacts Attorney B after learning of the incorrectly stated consideration and that he is informed by Attorney B that his client (Purchaser) considers the difference to be consulting fees and not a part of the purchase price. You further indicate that Attorney B states that his client is merely duplicating the acquisition transaction in which Seller acquired title to the property. Finally, you indicate that Attorney A then goes to the clerk's office and confirms by viewing the original instrument that the purchase price was stated to the Clerk as being \$250,000 and that the state grantor's tax is based upon that amount.

You have asked the committee to opine whether, under the facts of the inquiry, the conduct described constitutes unethical conduct by Attorney B. You also inquire as to ethical obligations of Attorney A. Finally, you ask whether Attorney A is obligated to report [to the Bar] the misstatement of consideration to the clerk.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:1-102(A)(4) which states that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation which reflects adversely on a lawyer's fitness to practice law; DR:1-103(A) which provides 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; DR:7-102(A)(5) which states that a lawyer shall not knowingly make a false statement of law or fact; and DR:7-102(B)(1) which requires that a lawyer who receives information clearly establishing that a person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

Committee Opinion  
May 11, 1993

The facts you have provided indicate that Attorney B represented Purchaser throughout all phases of the sale and that Attorney B was aware of the \$425,000 contract price. The facts also indicate that Attorney B was aware that the deed was recorded with the consideration stated as \$250,000. Based upon these facts, the committee is of the opinion that Attorney B thus knowingly made a false statement of fact, in violation of DR:7-102(A)(5). Such conduct may also be violative of DR:1-102(A)(4). See LE Op. 1429.

As to Attorney A's ethical obligations, the committee believes that the attorney may have a duty to report Attorney B's misconduct under DR:1-103(A) since that rule contains a two-prong test: first, a lawyer must have information indicating that another lawyer has committed a violation of the Disciplinary Rules. Since the committee has opined above that Attorney B's conduct is violative of DR:7-102(A)(5), the committee believes that the first prong has thus been satisfied. Second, the lawyer in possession of information regarding the conduct of another lawyer must determine whether the misconduct "raises a substantial question as to that lawyer's fitness to practice law in other respects." Relevant factors to be considered include, but are not limited to: the recency of the conduct; the seriousness of the conduct; the likelihood that the behavior will be repeated; the likelihood that it will affect the attorney's competence; and any mitigating or aggravating circumstances. The committee is of the opinion that Attorney B's knowingly stating an incorrect consideration on a deed for the purpose of avoiding the payment of the state grantor's tax on a higher amount, does raise a substantial question as to the lawyer's fitness to practice law in other respects.

Finally, under the facts you have presented, as to whether Attorney A is obligated to report the misstatement to the clerk, the committee is of the opinion that under the plain language of the standard articulated in DR:7-102(B)(1), Attorney A is obligated to report the misstatement of the purchase price to the tribunal, i.e., the clerk, unless there are mitigating factors as enumerated above (including but not limited to: the recency of the conduct; the seriousness of the conduct; the likelihood that the behavior will be repeated; the likelihood that it will affect the attorney's competence).

Committee Opinion  
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**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.