

Committee Opinion
July 21, 1994

LEGAL ETHICS OPINION 1608

MISCONDUCT – ZEALOUS
REPRESENTATION: PLAINTIFF'S
ATTORNEY SEEKING DUPLICATE
COMPENSATION FROM TWO
DEFENDANTS FOR SAME INJURIES.

You have presented a hypothetical situation in which Plaintiff's attorney represented plaintiff-passenger of an automobile that was rear-ended. Plaintiff's attorney filed a claim with the tortfeasor's insurance company and provided medical bills indicating that the plaintiff had been treated, starting two days after the accident and continuing for approximately six months, by a chiropractor and a medical doctor. You indicate that Plaintiff's attorney settled plaintiff's claim with the tortfeasor's insurance company for \$7,500.00, which covered medical bills as well as pain and suffering.

You further indicate that the same plaintiff was a passenger in another vehicle that was rear-ended the day after the first accident and the same attorney represented the plaintiff in his claim with the second tortfeasor's company (defendant #2). In that claim, plaintiff's attorney submitted the exact same medical bills from the chiropractor and the medical doctor. You indicate that the attorney for defendant #2 denied that plaintiff was injured in the second accident and Defendant #2 also denied that any amount of money was owed to the plaintiff based upon the previous settlement and the use of the identical medical bills for this claim.

Further, you indicate that, during the course of discovery, defense counsel filed a subpoena duces tecum request with the chiropractor. In reply, the chiropractor sent an itemized bill for treatment relating to the first accident. In reference to any treatment for the second accident, the chiropractor submitted a note to the defense counsel stating that he did not treat the plaintiff for any injuries from the second accident but only treated him for injuries relating to the first accident.

You advise that Plaintiff's attorney received a copy of the doctor's letter in discovery; however, he proceeded to trial and submitted those into evidence, contending that the bills from the chiropractor and the medical doctor involved treatment solely for the second accident.

Finally, you indicate that Plaintiff's attorney never informed the insurance company from the first accident of the second automobile accident. Furthermore, when attorney for defendant #2 questioned the plaintiff, under oath, about the first accident, he denied being injured as a result of the first accident.

You have asked the committee to opine whether, under the facts of the inquiry, plaintiff's attorney has acted unethically in submitting the same bills for both accidents and in seeking compensation from defendant #2 for injuries the plaintiff sustained from the first accident, after having received the copy of the chiropractor's letter before trial.

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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:7-102(A)(4) and 7-102(A)(5) which provide, respectively, that a lawyer shall not knowingly use perjured testimony or false evidence, or knowingly make a false statement of law or fact.

The committee has previously opined that it is improper for an attorney who has executed answers to interrogatories and who has represented to opposing counsel that the answers may be treated as if they were signed under oath by the attorney's client to include in said interrogatories answers which are false. See LE Op. 743.

The committee is of the opinion that the facts you have presented indicate that a statement of the chiropractor, in response to a discovery request, provides that the chiropractor did not treat the plaintiff for injuries from the second accident. Thus, based on the facts presented, the committee is of the opinion that plaintiff's attorney was aware, prior to trial, that the bill and treatment related only to the first accident, and thus, that plaintiff's attorney has knowingly made a false statement of fact, in violation of DR:7-102(A)(5), by submitting the bills in evidence and contending that such bills related solely to the second accident. More importantly, however, the committee believes that the facts also indicate that the plaintiff, when questioned under oath by the attorney for defendant #2, denied being injured as a result of the first accident. The committee opines, therefore, that plaintiff's attorney has also knowingly used perjured testimony or false evidence, in violation of DR:7-102(A)(4). Such conduct may also be violative of DR:1-102(A)(4). See LE Op. 1429.

Further, the committee also opines that, since the defense attorney has been able to ascertain that plaintiff and plaintiff's attorney were aware that the bills and treatment related only to the first accident, rather than the second accident as alleged at trial, and that plaintiff was not injured as a result of the first accident, the attorney for defendant #2 may have a duty to report such fraud and misrepresentation to the tribunal under DR:7-102(B)(1) and to the appropriate professional authority under DR:1-103(A).

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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.