

Committee Opinion  
September 8, 1995

LEGAL ETHICS OPINION 1650

DUTY/OBLIGATION WHEN  
ATTORNEYS LEARN AFTER  
SETTLEMENT THAT PLAINTIFF'S  
EXPERT WITNESS LIED ABOUT HIS  
QUALIFICATIONS IN DEPOSITIONS.

You have presented a hypothetical situation in which the plaintiff's expert lies about his credentials during his deposition. The false credentials of this expert form the basis of his expert opinion. Counsel for plaintiff uses this expert opinion to negotiate a six-figure settlement. Subsequently, attorneys for both sides learn that the expert witness lied about the professional qualifications that formed the basis of his expert opinion.

Under the facts you have presented, you have asked the committee to opine as to the obligations of counsel once they became aware of the expert witness' perjury.

The appropriate and controlling disciplinary rule relative to your inquiry is DR:7-102(B)(1) which states 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 (emphasis added). The committee has previously opined that false testimony given by a client during a deposition may constitute a "fraud upon a tribunal," adopting the view of other jurisdictions which have implicitly included depositions within the definition of "tribunal." LE Op. 1451.

The committee also stated that the false testimony must be examined to determine whether disclosure is required "to prevent a judgment from being corrupted by the [witness's] unlawful conduct." Id. Thus, not every misrepresentation made by a witness in a deposition is a "fraud upon the tribunal."

Assuming that the plaintiff's expert's qualifications about which he lied are material to the opinion rendered by such expert, the committee believes that it would be improper to allow the false deposition testimony to stand, regardless of whether the case proceeds to trial or is settled.

In the facts you present, the committee believes that if the expert's perjured testimony is so material to the opinion given by such expert that it corrupts the opinion, then counsel is required under DR:7-102(B)(1) to reveal the fraud to the tribunal.

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