

Committee Opinion
April 1, 1996

LEGAL ETHICS OPINION 1663

OBLIGATION TO REPORT TO COURT
AND/OR POLICE; OPPOSING PARTY IN
DIVORCE ADMITS THAT SIGNATURE
ON PLEADING IS NOT HIS OWN.

You have presented a hypothetical situation in which the attorney representing Wife in a domestic relations cause received a motion from Husband seeking temporary visitation. Husband has admitted that he did not sign his name to the motion, and attorney has reason to believe that the forgery was committed by an employee in the clerk's office. The Committee assumes that Husband did not authorize anyone to sign the motion on his behalf.

Under the facts you have presented, you have asked the committee to opine as to the propriety of attorney's reporting this occurrence to the court and/or the police or others.

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 on the tribunal shall promptly reveal the fraud to the tribunal (emphasis added).

The committee has previously opined that a plaintiff's use of a false name and social security number at both a deposition and during appearances in traffic court constituted fraud upon the court which the attorney for the opposing side was ethically bound to report to the tribunal. LE Op. 1490. The Committee has also opined that the determinative factor is whether disclosure is necessary to prevent the court's judgment from being corrupted by a party's unlawful conduct. LE Op. 1451.

In the facts you present, whether the information available clearly establishes that the employee forged Husband's signature requires a subjective determination on your part. The Committee observes, however, that at a minimum the "clearly establishes" standard imparts a good faith belief based upon a substantial degree of certainty and not merely upon suspicion or rumor. See LE Op. 1528. Thus the Committee cannot opine as to whether you have information clearly establishing that the employee perpetrated a fraud on the court which you are obligated to report.

Nevertheless, given the facts you present, it is clear at a minimum that someone forged husband's signature and that such person may have perpetrated a fraud on the court which you are obligated to report, under the mandate of DR:7-102(B)(1).

The Committee also believes that there is no rule in the Code of Professional Responsibility which requires an attorney to report to the police the conduct you have described. Given that you do have information which clearly establishes that someone forged the husband's signature to the motion, your ethical obligations would be discharged by reporting the matter to the court.