

LEGAL ETHICS OPINION 1840

CAN A LAWYER REPRESENTING A
SETTLEMENT COMPANY FACILITATE
THAT COMPANY'S PRACTICE OF RE-
DEEDING PROPERTY THROUGH A
RELOCATION INTERMEDIARY
WITHOUT PROPER RECORDATION?

In this hypothetical real estate Lawyer A has been asked to handle a real estate settlement of property, involving Relocation Company's ("Relocation") sale of property to purchaser. Relocation routinely purchases real estate on behalf of some of their client's employees who have been transferred and as a benefit of employment the company, through Relocation, agrees to purchase the employee's real estate.

Relocation purchases the real estate from Seller and Seller executes a deed to Relocation. Relocation does not record this original deed and then enters into a contract and sells the same real estate to Buyer. Lawyer B for Relocation drafts a deed for this transaction by preparing a new "page one" that contains the name of Buyer but uses the signature page of the original deed between Seller and Relocation. This is routine practice for Relocation and Lawyer B as it relates to these types of transactions for their client's employees.

Relocation advises Lawyer A that the proceeds of the sale are to be payable to Relocation (not the grantor of the deed). Lawyer A recognizes that Relocation should have recorded the original deed and paid all applicable recording fees and taxes and that seller's warranties under the original deed were made to Relocation, not the buyer.

The question posed involves whether or not this is unethical for Lawyer A to facilitate Relocation's practice of not recording the first deed and preparing legal documentation that does not accurately reflect the true chain of title to the real estate. What are Lawyer A's ethical obligations as to the chain of title and is Lawyer A obligated to report Lawyer B's conduct?

There are two principal issues involved with these facts. The first issue involves the failure of Relocation to properly record the chain of title of said property and pay all applicable recording fees and taxes. The facts you provide indicate that Lawyer B clearly knew that he was substituting a second front page over the original deed thereby misrepresenting the actual conveyance of the property. The committee believes that this conduct clearly involves fraud and is a violation of the Rules of Professional Conduct. A lawyer cannot knowingly assist a client in committing fraud. Rule 1.2 (c)¹

¹ RULE 1.2 Scope of Representation

(c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

When the client's course of conduct has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is not permitted to reveal the client's wrongdoing, except where permitted by Rule 1.6. However, the lawyer is required to avoid furthering the purpose, for example, by suggesting how it might be concealed. Rule 1.2 Comment [10]. In this scenario Lawyer A must counsel the client as to any past fraudulent conduct and cannot continue with this closing knowing that Lawyer B and Relocation's offered deed is fraudulently constructed and does not legally reflect the chain of title and deeds in this conveyance.

The second issue involves the misconduct of Lawyer B, who is employed by Relocation and has advised Relocation in this course of conduct and misrepresentation. Whether Lawyer A has a duty to report Lawyer B under Rule 8.3 (a)² is based upon a two-prong test: first, a lawyer must have information indicating that another lawyer has committed a violation of the Rules of Professional Conduct. Rule 8.4(c) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on that lawyer's fitness to practice law. Rule 8.4(c).³ Since the committee has opined above that Lawyer B's conduct involved fraud the committee believes that the first prong of the test has been met.

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." Following the analysis used in LEO 1522⁴, the committee is of the opinion that Lawyer B's knowing failure to record the first deed and thereby fraudulently substituting a second front page on the deed does raise a

² RULE 8.3 Reporting Misconduct

(a) A lawyer having reliable information that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness to practice law shall inform the appropriate professional authority.

³ RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:
(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

⁴ LEO 1522 involved a similar fact pattern in that a lawyer knowingly stated an incorrect consideration on a deed for the purpose of avoiding the payment of the grantor's tax on a higher amount and the committee found that lawyer to have made a false statement of fact in violation of DR 7-102(A)(5) and DR 1-102(A)(4), which triggered the requestor's duty to report under DR 1-103(A). LEO 1522 analysis was based upon DRs 1-102(A)(4), 1-103(A) and 7-102(A)(5) which are substantially the same as Rule 8.4, 8.3 and 3.3(a)(1).

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substantial question as to the lawyer's fitness to practice law in other respects and thereby triggers Lawyer A's duty to report, unless there are additional mitigating circumstances.⁵

This opinion is advisory only, based only upon the facts presented and not binding on any court or tribunal.

⁵ The Committee cautions that this conduct may involve criminal conduct in altering a document that was attested to and notarized, however that involves a legal analysis.