

ETHICS ADVISORY PANEL  
Opinion #92-72, Request #297  
Issued October 22, 1992

An attorney seeks Panel advice regarding the ethical propriety of filing a Disciplinary complaint against another attorney pursuant to Rule 8.4.

The attorney represented the wife in a divorce action and prepared and filed pleadings on behalf of the wife. The attorney forwarded copies of all documents to Attorney X. Attorney X telephoned the attorney from Family Court stating that the divorce was ready to proceed and that the husband and wife were present. The inquiring attorney informs the Panel that notice of this court date was never received. In the same telephone call, the wife advised the inquiring attorney that she had agreed to a property settlement and felt that the inquiring attorney did not have to appear in court with her. The inquiring attorney informs the Panel that this settlement agreement was never reviewed by the attorney prior to the party's agreement. The attorney later discovered that the child support payments ordered were below guidelines and that the marital assets were understated by the husband.

In this situation, it appears that Attorney X violated Rule 4.2 entitled "Communication with Person Represented By Counsel." Attorney X discussed the divorce, property settlement and child support with the wife in court without the inquiring attorney present. The next issue is whether this violation of Rule 4.2 must be reported under 8.3 entitled "Reporting Professional Misconduct."

Rule 8.3 states that:

(a) A lawyer having knowledge 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 as a lawyer in other respects, shall inform the appropriate professional authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6.

Rule 8.4(c) entitled "Misconduct" states that "It is professional misconduct for a lawyer to: engage in conduct involving dishonesty, fraud, deceit or misrepresentation." In addition this Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.

The Panel agrees that if the inquiring attorney believes that his client was intentionally misled and defrauded by Attorney X, and that Attorney X violated Rule 4.2 in furtherance of the fraud, then the inquiring attorney is obligated to report such conduct pursuant to Rule 8.3. Rule 1.6(a) mandates that "a lawyer shall not reveal information relating to representation of a client unless the client consents after consultation." To the extent that the violation may be premised upon information relating to the inquiring attorney's representation of his client, the client's consent is required under Rule 1.6 for the inquiring attorney's disclosure of the information.