

ETHICS ADVISORY PANEL
Opinion #93-1, Request #329
Issued March 31, 1993

An attorney seeks Panel advice as to how to proceed in a case where clients cannot be located. The attorney has two separate cases where the facts are almost identical. The attorney interviewed two clients who claimed personal injury from automobile accidents. The attorney processed the claims with the respective insurance companies but never brought the case to settlement. The attorney is unable to locate the clients by phone, letter, post office search or registry search. In one case, the Federal Bureau of Investigation contacted the attorney alleging that both the client's identity and the personal injury claim were fraudulent. In the other case, an insurance fraud investigator contacted the attorney alleging that the client's claim was fraudulent.

The attorney asks whether withdrawal from representation is a feasible way to handle these matters. In addition, the attorney asks whether law suits must be filed before the statute of limitations expires in order to protect each client.

Rule 1.17 entitled "Declining or Terminating Representation" allows an attorney to withdraw from the representation of a client if fraud is involved. Rule 1.17(b)(1) and (2) states that:

Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interest of the client; or if:

(1) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(2) the client has used the lawyer's services to perpetrate a crime or fraud: . . .

(4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(5) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

The Panel believes that the attorney is under an obligation to exercise diligence in locating the client. The Panel has opined in a prior opinion that "the attorney should continue efforts to locate the client, perhaps by personal visitation to the last known address." See, Ethics Advisory Opinion #91-82, Issued December 5, 1991. A diligent search may also include, for example, a search of the post office and registry of motor vehicles.

If the attorney reasonably believes (emphasis added) that the claim is fraudulent, then withdrawal from representation is permitted. The comments to the Rule state: "Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it".

According to the facts, the client has not authorized the attorney to file suit. The attorney may reasonably believe, based upon the facts of this case, that the client does not intend to pursue this matter, unless the attorney is permitted to terminate the representation under the Rules, the attorney must continue to protect the client's interests.