

ETHICS ADVISORY PANEL
Opinion #93-10, Request #340
Issued March 15, 1993

An attorney seeks Panel guidance with regard to the following set of facts. The attorney's law firm represented a driver and passenger who were injured in an automobile accident. The attorney who initially handled this case left the law firm therefore the inquiring attorney continued to work on the file. The attorney negotiated settlement with each client and the defendant's insurance carrier. A settlement was achieved on behalf of the passenger but not the driver. The attorney placed the driver's claim into suit. As part of the litigation process, the driver was asked to answer interrogatories. Soon thereafter, the driver informed the attorney that he never had a passenger in his car. The attorney contacted the passenger/client who informed the attorney the driver was not being truthful in his story. The attorney filed a motion to withdraw from the driver's case. The attorney asks the following questions: 1) Whether the attorney must notify anyone of the potential fraudulent claim; 2) whether the attorney must return the attorney's fee on this case; and 3) whether the attorney has a duty to inform the driver's new attorney of these problems.

The issue of whether the attorney must notify anyone of the potential fraudulent claim is guided by Rule 1.6 entitled "Confidentiality of Information". The rule states that:

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are implicitly authorized in order to carry out the representation, and except as stated in paragraph (b).

This information is protected under Rule 1.6(a) because it relates to the representation of a client. Since the case settled out of court the attorney does not have to be concerned with perpetrating a fraud on a tribunal. In addition, the attorney acted responsibly by withdrawing from the case after the information was known.

The Panel believes that it cannot answer whether or not the attorney must refund the fee without making a judgment as to whether or not the attorney had knowledge of the alleged fraud. The definition of knowledge is set forth in the Terminology section of the Preamble to the Rules. "'Knowingly", "Known", or "Knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances." The attorney informed the Panel that there was no prior knowledge of the fraud, therefore, the Panel agrees that the Rules do not address the issue of reimbursement.

The Panel further believes that the information is protected under Rule 1.6(a) with regard to the attorney's duty to inform new counsel of this information. Pursuant to Rule 1.6(a), the attorney cannot reveal this information without the informed consent of the client.