

ETHICS ADVISORY PANEL
Opinion #93-35, Request #369
Issued May 12, 1993

The attorney represents a client who was involved in an automobile accident. The client was struck in the rear by vehicle number two. During negotiation, the insurance adjuster informed the attorney that the client was suspected of participating in a fraudulent accident with the operator of vehicle number two and the passenger. The insurance company denied to honor the client's claim for injuries. The attorney confronted the client on two occasions regarding the allegation of fraud and informed the client of the legal consequences of fraud. The client denied any illegal conduct on both occasions but did indicate that he suspected a setup by the operator of vehicle number two. The inquiring attorney seeks Panel advice regarding the continued representation of the client in light of the client's suspicion of a setup.

Rule 1.17 entitled "Declining or Terminating Representation" states that:

(b) 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, of 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;

(3) the client insists upon pursuing an objective that the lawyer considers repugnant or imprudent; . . .

The language in Rule 1.17(b) is discretionary in nature and does not mandate withdrawal from representation. In the facts stated above, the attorney may or may not withdraw from representing the client. As long as the withdrawal would not prejudice the client's interests, then the attorney may withdraw. If the attorney reasonably believes that the client is engaged in a fraud, then the attorney should withdraw. See, also Rule 1.2 entitled "Scope of Representation" and Rule 3.3 entitled "Candor Toward The Tribunal."