

ETHICS ADVISORY PANEL
OPINION #94-49 REQUEST #519
Issued August 25, 1994

The inquiring attorney represents Client A in a Workers' Compensation case. Client A sought compensation for injuries allegedly arising out of her employment. However, such benefits were denied at the pre-trial level. The inquiring attorney's law firm also represents Client B. Client B made an appointment with the inquiring attorney and during said appointment revealed that he/she believed that Client A has not been honest in terms of his/her disability and that Client A has been working "under the table." The attorney has alerted Client A that he/she may have to withdraw from the case because of information obtained by the attorney which may compromise the attorney's relationship with the client, which the attorney believes is reliable. The attorney asks the Panel whether he/she is able to reveal to Client A, without revealing any source, namely Client B, that he/she has knowledge that Client A has been working; and if Client A denies this, must the attorney withdraw from representing Client A in the Workers' Compensation case knowing the possibility exists that Client A will offer false testimony to the court under oath.

Rule 1.6(a) entitled "Confidentiality of Information" provides that "A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation . . ." Rule 3.3 entitled "Candor Toward The Tribunal" states in pertinent part: (a) A lawyer shall not knowingly: (4) offer evidence that the lawyer knows to be false."

When a lawyer seeks to withdraw from representation Rule 1.17 entitled "Declining or Terminating Representation" is applicable. The rule states that:

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the rules of professional conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

Based upon the facts presented, the inquiring attorney can, with the consent of Client B, reveal to Client A the fact that he/she is aware that he/she is working and is being paid for said employment.

The attorney cannot knowingly offer false testimony to a tribunal pursuant to Rule 3.3 and must withdraw from representing Client A under Rule 1.17.