

ETHICS ADVISORY PANEL
OPINION #94-54 REQUEST #524
Issued August 25, 1994

The inquiring attorney represents a client in a matter which is currently in litigation before a tribunal. The client's previous attorney, Attorney #1, failed to respond to discovery, trial calendars and allowed the case to be dismissed without the client's consent. The Court on two occasions inquired of the inquiring attorney whether or not he/she knew if a disciplinary action was filed by the client. The inquiring attorney does not believe that Attorney #1 has malpractice insurance and also believes that if a complaint is filed, the client's ability to collect a judgment against Attorney #1 will be adversely affected.

The attorney asks whether or not he/she must report Attorney #1 to the Disciplinary Office and, if so, would the inquiring attorney be protected from being sued by his/her client for not assiduously representing the client's interests.

Rule 8.3 entitled "Reporting Professional Misconduct" states in pertinent part:

(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.

If the inquiring attorney has knowledge that a rule violation has occurred by another attorney which raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer, then he/she must report the attorney to the Disciplinary Office. An attorney is not required to report actions which would be considered misconduct when the reporting would violate Rule 1.6 "however a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interest." See, Comments to Rule 8.3 and In Re Ethics Advisory Panel #92-1.

The inquiring attorney also asks if he/she will be protected from being sued by the client. The Panel declines to render any advise regarding this question because an opinion would require resolution of questions concerning substantive law outside the area of legal ethics and discipline. See, Rules of the Rhode Island Supreme Court Ethics Advisory Panel Rule 2(g).