

ETHICS ADVISORY PANEL
OPINION #94-70 REQUEST #541
Issued September 28, 1994

The inquiring attorney, hereinafter Attorney B, seeks the Panel advice regarding the following facts. Attorney A refers a case to Attorney B after the matter is in the preliminary stages of litigation. Thereafter Attorney B discovers that Attorney A made "fatal strategic and tactical errors" which cannot be corrected. Attorney B asks what are his/her duties to disclose this information to the client and Attorney A and whether B has a duty to inform the client of potential claims against Attorney A.

Rule 1.4 entitled "Communication" states that:

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

The comments to Rule 1.4 state that "[t]he client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so." Moreover, Rule 2.1 entitled "Advisor" states the following: "In representing a client, a lawyer shall exercise independent professional judgment and render candid advice . . ." The comments provide that "A client is entitled to straight forward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront."

Based upon the above quoted Rules, the Panel believes that Attorney B should inform the client of these pertinent circumstances which impact the lawsuit. The attorney has a duty to protect and serve the interests of his/her client. With regard to informing Attorney A about his/her strategic and tactical errors, the inquiring attorney must acquire the consent of his/her client.