

ETHICS ADVISORY PANEL
OPINION #94-78 REQUEST #552
Issued December 6, 1994

The inquiring attorney represents an estate of which Attorney Y is the executor. Attorney Y as executor, sold some of the decedent's property to pay off the deceased's debts. The inquiring attorney advised Attorney Y to deposit the proceeds of the sale in a bank account. When questioned about the status of claims filed against the estate, Attorney Y stated that not all of the claims were paid and that the remainder would be paid. The inquiring attorney is of the opinion that Attorney Y may have diverted funds from the estate. The inquiring attorney seeks Panel advice regarding the following: What obligation does the inquiring attorney owe to Attorney Y pursuant to Rules 1.6 and 8.3, and should the inquiring attorney investigate matters to substantiate these beliefs regarding the remaining assets.

With respect to whether the inquiring attorney may reveal information concerning the alleged wrongdoings, Rule 1.6 entitled "Confidentiality of Information" applies. That Rule provides as follows:

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

(b) A lawyer may, but is not obligated to, reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm; or

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

Under the facts as provided by the inquiring attorney, the Panel does not believe the exceptions delineated in subsection (b) are applicable. It is therefore the Panel's opinion that the inquiring attorney may not disclose his/her knowledge of the executor's alleged wrong doings. The Rule clearly states that "a lawyer shall not reveal information relating to representation of a client unless the client consents after consultation . . ."

Rule 8.3 has bearing on the issue raised by this inquiry and provides as follows:

Rule 8.3. Reporting Professional Misconduct.

(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.

(b) A lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This rule does not require disclosure of information otherwise protected by Rule 1.6 . . .

In this case, Rule 8.3(c) prohibits the inquiring attorney from disclosing the alleged wrongdoing because the information is protected by Rule 1.6. As to the inquiring attorney's obligations as attorney to an estate See, EAP Opinion 92-23 (Issued May 20, 1992) which opined on the fraudulent withdrawals from an estate by a guardian.