

Final

ETHICS ADVISORY PANEL
OPINION #95-36, REQUEST #604
ISSUED - OCTOBER 12, 1995

The inquiring attorney was asked to represent a client in a breach of contract action. However, the client requested that no suit be filed until further notice. After three months, the client wished to resume the action. The client stated that he/she had obtained a discharge in bankruptcy and did not list the claim as an asset on the bankruptcy petition because his/her bankruptcy attorney indicated he/she did not have to. The client stated he/she now feels "safe" to file suit in the contract action. The inquiring attorney asks whether it is ethical to handle this matter, knowing the client waited until receiving a discharge in bankruptcy before instituting this suit.

The inquiry invokes the following Rules of Professional Conduct. Rule 1.2 entitled "Scope of Representation" states in part:

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

The comments that follow this Rule state..."a lawyer may not knowingly assist a client in criminal or fraudulent conduct...When the client's course of action has already begun and is continuing...the lawyer is required to avoid furthering the purpose."

Pursuant to Rule 1.2 the inquiring attorney should counsel the client regarding his/her proposed course of conduct. If the contract claim is an asset required to have been disclosed in a bankruptcy petition and if failure to so list the claim constitutes fraud, then the inquiring attorney cannot represent the client in the contract claim in light of Rule 1.2(d).