

ETHICS ADVISORY PANEL
OPINION # 95-38, Request # 608
Issued - July 13, 1995

The inquiring attorney seeks Panel advice regarding withdrawal of representation as counsel to Corporation X in a Superior Court breach of contract matter. The inquiring attorney discovered that Corporation X's principal (Mr. X) had committed fraud and given false testimony. When the inquiring attorney confronted Mr. X with the damaging evidence, Mr. X told the inquiring attorney to "lose" the evidence and stated "If they know about that, I'll lose." Because the matter was before a tribunal, the inquiring attorney discussed Mr. X's false testimony with the Judge pursuant to Rule 3.3. The Judge advised that the inquiring attorney may withdraw from representation during the trial if Mr. X did not correct the testimony. Mr. X reluctantly recanted and lost the case.

The inquiring attorney informed Mr. X that he/she would not represent him in the appeal and seeks to decline representing Mr. X. The inquiring attorney reasonably believes that Mr. X used his/her services to perpetuate fraudulent behavior on the Court. The inquiring attorney cites Rule 1.17(b)(2)(3) and (6) to support his/her decision to decline the representation of the client.

Rule 1.17 entitled "'Declining or Terminating Representation" states the following in part:

- (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:...
- (2) the client has used the lawyer's services to perpetrate a crime or fraud;
- (3) the client insists upon pursuing an objective that the lawyer considers repugnant or imprudent; and...
- (6) other good cause for withdrawal exists.

Rule 1.17(b) describes the circumstances under which a lawyer is permitted, but not required, to withdraw from representing a client notwithstanding potential harm to the client. Rule 1.17(b)(1) and (2) permit a lawyer to withdraw when the client pursues an action that the lawyer reasonably believes is criminal or fraudulent, or when the client has used the lawyer's services to perpetrate a crime or fraud. It appears from the facts provided by the inquiring attorney, that he/she may decline to represent Mr. X if the attorney reasonably believes that Mr. X used the lawyer to perpetrate a fraud on the Court.