

Final

ETHICS ADVISORY PANEL  
OPINION #95-43, REQUEST #610  
ISSUED - OCTOBER 12, 1995

The inquiring attorney represents Mother regarding a child support matter against Father. Father is represented by Attorney B. Mother had sole custody of minor child and Father was under a court order to pay child support. Father was delinquent in payments for ten (10) years. In 1995, Mother consented to allow Maternal Aunt, represented by Attorney C, to have custody of the child.

After these events occurred, the inquiring attorney learned that Attorney B contacted Maternal Aunt to inquire whether she was willing to have custody of the child. Attorney B referred Maternal Aunt to Attorney C. When Attorney C asked Maternal Aunt for a retainer, Attorney B contacted Paternal Grandmother who gave Aunt a check to pay for the legal costs. The inquiring attorney believes that Attorney B orchestrated this arrangement in order to circumvent client's obligation to support the child.

The inquiring attorney asks whether Attorney B has violated the Rules of Professional Conduct and if so, must he/she report this violation according to Rule 8.3

Rule 8.3 entitled "Reporting Professional Misconduct" states the following:

(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 required disclosure of information otherwise protected by Rule 1.6.

Rule 8.4 defines "Misconduct" and states the following:

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

In this situation described, the determination as to whether another attorney has violated an ethical rule that raises a substantial question as to that attorney's honesty, trustworthiness or fitness to practice is one which involves determinations as to credibility that are largely subjective. Accordingly, such a determination is one to be made by the attorney witnessing such conduct and not by this Panel. 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 Counsel's office.