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**ETHICS ADVISORY PANEL
OPINION 96-10, - REQUEST # 649
ISSUED - JUNE 13, 1996**

FACTS:

The inquiring attorney is representing a client, C, who is involved in a real estate dispute with two other parties. There are two law suits involved: A versus B, and C versus A.

After much litigation, the inquiring attorney moved to consolidate the two actions in Superior Court where they were tried and a decision entered. A appealed the judge's decision and filed two notices of appeal, designating each action as separate. A and B settled their case and entered a stipulation that "withdrew all appeals." Although it is unclear whether A intended to withdraw the appeal in the matter C vs A, the inquiring attorney later learned from the Supreme Court clerk that the Supreme Court never had any record of an appeal in the matter of C vs. A. The fact that there is technically no appeal pending is in the inquiring attorney's client's best interest. The attorney believes that if he/she brings the mistake to light the appeal may be reinstated because of the "clerical error."

ISSUES PRESENTED:

The inquiring attorney asks 1) whether he/she can inform the client that all appeals were dismissed and 2) whether he/she is obligated to inform either the tribunal or opposing counsel of this "clerical error."

OPINION:

- 1.) Yes. A lawyer is obligated to keep a client informed regarding the status of a case.
- 2.) Yes. A lawyer should demonstrate respect for the legal system and for those who serve it.

REASONING:

A lawyer has an obligation to keep a client informed concerning matters undertaken on the client's behalf. ABA Model Rule 1.4. See, ABA/BNA Lawyers' Manual on Professional Conduct, 31:502 (1984). A duty to communicate means the lawyer must advise clients as to the

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status of their affairs, ABA/BNA Manual, 31:504 citing The Florida Bar v. Peterman, 306 So2d 484 (Fla 1975).

Rule 1.4 entitled "**Communication**" states:

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

The Panel believes that the inquiring attorney would not be violating any ethical rule of professional conduct if he/she informs the client about the appeals and the alleged errors committed.

Absent a rule that directly addresses "clerical issues," the Panel believes strongly in the principal of fairness to others and respect for the legal system. The Preamble to the Rules of Professional Conduct address the issue of professional impropriety. The Preamble states in part:

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should avoid even the appearance of professional impropriety. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials.

The Panel believes that good practice would dictate that the inquiring attorney should notify opposing counsel regarding the clerical error.