

DIGEST OF ETHICS ADVISORY PANEL  
OPINION 90-13, REQUEST 86  
Issued February 27, 1990

An attorney seeks Panel advice as to the proper course of action under the circumstances he describes. The attorney states that he has been contacted by a client who has requested that the attorney represent him in connection with a personal injury. The attorney indicates that the client has just discharged another attorney who had represented him up to this point. The client told the attorney that his first attorney obtained an offer of settlement which the client found unacceptable and refused. The attorney states that upon reviewing the client's file, he found that the first attorney filed a lien equal to one third of the rejected settlement offer. The attorney states that he feels the existence of this lien effectively prevents the client from obtaining effective representation. The attorney asks what steps, if any he should take.

The Panel's Rules do not empower it to rule on the propriety of attorney conduct other than that of the inquiring attorney. It is well settled, however, that an attorney who obtains a settlement offer which a client refuses and who is subsequently discharged by the client is entitled to payment on a quantum meruit basis only. See Digest of Ethics Advisory Panel Opinion 89-21 and the cases cited therein.

Rule 8.3, entitled "Reporting Professional Misconduct" provides, in pertinent part:

(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.

The comment to this rule provides, in pertinent part:

This Rule limits the reporting obligation to those offenses that a self-regulating professional must vigorously endeavor to prevent. A measure of judgment is, therefore, required . . . The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.

In his analysis of the scope of Rule 8.3 Professor Hazard notes that "although the duty to report violations is an important aspect of the bar's self governance . . . [o]ur society, unlike some others, does not impose a general duty to report crime, even serious crime." Professor Hazard goes on to note that "an enforced 'snitch rule' could weaken the profession . . . by breeding mutual suspicion." I G. Hazard The Law of Lawyering, 555-556. Explaining the scope of Rule 8.3, Professor Hazard notes that "[m]erely technical violations . . . would not qualify [under the mandatory reporting

provisions of Rule 8.3] whereas destruction of evidence under subpoena, suborning perjury or self-dealing with trust funds would." Id. at 556.

Rule 8.3 simply outlines the scope of mandatory reporting on one's fellow attorney. Attorneys may report lesser infractions to the appropriate authorities as they see fit.

The Illinois Supreme Court had occasion to review the application of this reporting requirement as it was formerly embodied in DR 1-103(a) in In re Himmel, 533 NE.2d 790, 125 Ill.2d 531, 127 Ill Dec. 708 (1989). The court found that Attorney Himmel's failure to report unprivileged information concerning another attorney's fraudulent conversion of client funds warranted suspension of his license. In so holding the court stressed that Himmel's failure to report his brother attorney's misconduct had effectively frustrated any disciplinary authority investigation and was thus tantamount to interference with the administration of justice.

The Panel takes the position that if the attorney reasonably believes that the conduct of the opposing counsel rose to the level of seriousness outlined above, then Rule 8.3 obligates him to report it to the disciplinary authorities, and his conduct in this respect would be protected. If, however, the attorney does not reasonably believe that the conduct rose to the requisite level of seriousness then the Panel takes the position that the attorney is under no obligation to report it to the disciplinary authorities.

As a secondary part of his inquiry the attorney advises the Panel that he obtained a settlement offer for a different client which the client refused. This client now wishes to retain other counsel. The attorney asks the Panel whether the attorneys fee should be a percentage of the offer or whether it ought to be calculated on a quantum meruit basis. The Panel takes the position that in this circumstance one is entitled to an attorney's lien calculated on a quantum meruit basis only.

Ethics Advisory Panel advice is protective in nature. There is no requirement that an attorney abide by a Panel opinion, but if he or she does, he or she is fully protected from any charge of impropriety.