

ETHICS ADVISORY PANEL  
Opinion #92-94, Request #322  
Issued March 31, 1993

An attorney seeks Panel advice as to how to proceed in a case in which the client cannot be located and the statute of limitations is near expiration. The attorney states that the client failed to keep an appointment with the attorney and that a letter sent to the client's address was returned marked "Return to Sender, No Such Number". In addition, the attorney was contacted by a special investigative unit for the insurance carrier alleging that the client may have a fraudulent claim in this case. The attorney asks whether suit should be filed prior to the expiration of the statute of limitations. The attorney has had no contact with the client in some two and one half years.

Rule 1.17 entitled "Declining or Terminating Representation" enables an attorney to withdraw from representation in some circumstances. Rule 1.17(b)(1)(2)(4) and (5) state that:

(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 interest of the client; or if:

(1) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(2) the client has used the lawyer's services to perpetrate a crime or fraud; . . . . .

(4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyers will withdraw unless the obligation is fulfilled;

(5) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client;

The Panel believes that the attorney is under an obligation to exercise diligence in locating the client. The Panel has opined in a prior opinion that "the attorney should continue efforts to locate the client, perhaps by personal visitation to the last known address." See, Ethics Advisory Panel Opinion #91-82, Issued December 5, 1991. A diligent search may also include, for example, a search of the post office and registry of motor vehicles.

If the attorney reasonably believes (emphasis added) that the claim is fraudulent, then withdrawal from representation is permitted. According to the comment to the Rule "Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it."

According to the facts, the client has not authorized the attorney to file suit. The attorney may reasonably believe, based upon the facts of this case, that the client does not intend to pursue this matter. Unless the attorney is permitted to terminate the representation under the Rules, the attorney must continue to protect the client's interests.