

ETHICS ADVISORY PANEL
OPINION #93-94 REQUEST #438
Issued December 8, 1993

The inquiring attorney was advised by two (2) beneficiaries that they fraudulently obtained witnesses' signatures on a will. The inquiring attorney pledged to keep this information confidential and advised them that their actions constituted fraud and further suggested that they reconsider offering the document for probate. The will is to be probated in a foreign jurisdiction and the beneficiaries have retained another lawyer to handle the matter. The inquiring attorney asks whether he/she has an obligation to disclose the information to the probate court in the foreign jurisdiction or to the attorney retained by the beneficiaries.

Rule 1.2(d) has bearing on the issue raised by this inquiry and provides as follows:

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer known is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

The Comment to the Rule further explains that

"[w]hen the client's course of action has already begun, the lawyer's responsibility is especially delicate. The lawyer is not permitted to reveal the client's wrongdoing, except where permitted by Rule 1.6. (emphasis added)

In this case, the beneficiaries' conduct had begun prior to their meeting with the inquiring attorney. Thus, unless otherwise permitted by Rule 1.6, the inquiring attorney may not reveal the information.

Rule 1.6 provides as follows:

(a) A lawyer shall not reveal information relating to representation of a client shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may, but is not obligated to, reveal such information to the extent the lawyer reasonably believes necessary:

- (1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm; or
- (2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

Under these facts, the Panel does not believe that an exception is applicable. Accordingly, the inquiring attorney may not disclose the information either to the probate court or to the lawyer representing the beneficiaries. See, Opinion #92-1 (Issued January 14, 1992).