



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in July 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.6 and 3.3. See also ISBA Ethics Advisory Opinion 90-12. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

**Opinion No. 87-15
May 19, 1988**

Topic: Disclosure of Understatement of Income by Adverse Party

Digest: Lawyer for Wife in Marriage Dissolution Matter Has No Duty to Disclose Understatement of Income on Joint Tax Returns by Client's Husband.

Ref.: Rules 1-103, 4-101 and 7-102

FACTS

A lawyer representing a wife in a dissolution of marriage action has obtained information during discovery which indicates that the husband, who controlled the family finances and prepared the joint tax returns, had grossly understated the couple's income for several years. The lawyer believes that the "Innocent Spouse Rule" would protect his client from any adverse consequences from signing the joint returns if disclosure is made to federal or state tax authorities.

QUESTION

The lawyer asks whether there is any duty to disclose the husband's apparent understatement of income to federal and state tax authorities.

OPINION

Various provisions of the Code of Professional Responsibility concern obligations to disclose information with respect to actual or potential wrongdoing by others. Rule 1-103 requires disclosure of unprivileged knowledge of certain disciplinary violations by other lawyers to the proper authorities. Rule 4-101(c) requires a lawyer to disclose information about a client to the extent it appears necessary to prevent a client's commission of an act that would result in death or serious bodily harm to another person.

Rule 4-101(d)(3) provides that a lawyer may reveal the intention of a client to commit a crime. Rule 7-102(b)(1) deals with a lawyer's disclosure obligations with respect to fraud by clients; and Rule 7-102(b)(2) requires a lawyer to report a fraud upon a "tribunal" perpetrated by a person other than his client.

The husband is not identified as a lawyer, and therefore Rule 1-103 would not apply. Rules 4-101(c) and (d)(3) also appear inapplicable because the alleged understatement of income was committed by the husband rather than the lawyer's client. Rule 7-102(b)(1) would not apply for the same reason.

The only rule which might possibly apply to this situation is Rule 7-102(b)(2), which provides that a lawyer who receives information clearly establishing that "a person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal." The term "tribunal" is not defined in the Code or the committee Commentary, nor has it been construed previously by this Committee. We do not believe that the term "tribunal" was intended to encompass agencies like the Internal Revenue Service. This opinion is consistent with the dictionary definition of the term as "a court or forum of justice...having authority to hear and decide disputes so as to bind the disputants." Webster's Third New International Dictionary 2441 (1981). We therefore believe that the lawyer has no duty under the Code of Professional Responsibility to disclose the husband's apparent understatement of income to federal or state tax authorities.

The Committee has not considered whether the "Innocent Spouse Rule" would in fact protect the lawyer's client from any adverse consequences of disclosure. Nor does the Committee express any opinion whether the lawyer may have any duty imposed by the tax laws to disclose the information in question.

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