

MINUTES

COMMITTEE: Ethics Committee

DATE: June 2011

4. CHAPTER 8, RULE 21: LAWYER'S OBLIGATIONS AFTER OBTAINING WITHOUT NOTICE ORDER

The Discipline Committee asked the Ethics Committee to look at an issue where counsel obtained a without notice order, but subsequently failed to make timely disclosure of material facts which came to his attention at a later date. The facts were inconsistent with what the court had been advised on the original without notice application.

The Committee noted that Rule 21 requires a lawyer seeking a without notice order to inform the court or tribunal of all material facts known to the lawyer that will enable the court or tribunal to make an informed decision, even if the facts are adverse to the interests of the lawyer's client.

The Committee was of the opinion that where the court or tribunal has made a without notice order, and the lawyer who obtained the order later learns of material facts adverse to the interests of the lawyer's client, the lawyer must make timely disclosure of those facts to the tribunal that granted the order and, where appropriate, to opposing parties.