

MINUTES

COMMITTEE: Ethics Committee

DATE: April 11, 1996

9. CHAPTER 8, RULE 1(b); DUTY OF LAWYER TO PROVIDE ACCURATE INFORMATION TO REGULATORY AUTHORITY

The Committee considered the circumstances under which a lawyer may be under a duty to verify the accuracy of information given to a regulatory authority. It identified three issues:

- (1) Does the fact that the lawyer uses no words such as “on behalf of my client” or “my client instructs me” place a burden on the lawyer to verify, to some degree, the accuracy of any representations the lawyer makes to the regulatory authority?
- (2) Is there a requirement that lawyers making representations to regulatory bodies, in some circumstances, take steps to verify the facts contained in their representations?
- (3) If the answer to 2 above is yes, does that requirement amount to an obligation of “due diligence” or some similar standard?

In the Committee’s view, it would be good practise for a lawyer to indicate that the representations are based on instructions received from the client. However, the Committee’s opinion is that where a lawyer makes a statement of fact about a client’s situation which is not an undertaking or is not made in court proceedings, it is reasonable to infer that the representation is that of the client and not the lawyer.

The Committee was of the opinion that *Professional Conduct Handbook*, Chapter 1, Rule 1(1), Chapter 1, Rule 1 and Chapter 8, Rule 1(b) together impose a duty on a lawyer to decline to assist a client who the lawyer knows is making false representations to a regulatory authority. In this context, the word “knows” bears the ordinary meaning it has in the Criminal Law and the Law of Torts and includes constructive knowledge.

In cases where the lawyer has no knowledge that the representations of the client are false, the Committee was of the view that there is no duty on the lawyer to verify the accuracy of information given to a regulatory authority.

The Committee was of the view that where a lawyer has information that arouses suspicion about the accuracy of facts the client has given, the lawyer does have an obligation to ensure the facts are accurate before making a submission containing those facts to a regulatory body. It would be reasonable to characterize that obligation as one of “due diligence.”