

MINUTES

COMMITTEE: Ethics Committee

DATE: June 9, 2005

8. CHAPTER 3: WHETHER LAWYER HAS A DUTY TO DISCLOSE INFORMATION TO CLIENTS WHERE INFORMATION OBTAINED INADVERTENTLY FROM OTHER SIDE

Several years ago Lawyer acted for C Company and its employee, B, in defending a claim against it by L. for over \$1,000,000. Lawyer conducted an examination for discovery of L. in 2003 before turning the file over to other counsel in his firm. Settlement negotiations have been conducted by other counsel and L. has offered to accept \$100,000 in satisfaction of the claim. Counsel has had difficulty scheduling further necessary discoveries of L. which L.'s counsel explains by advising that L. is having health problems.

In the past month, through happenstance, Lawyer played golf as part of a foursome with L. L. apparently did not recognize him as the lawyer who had examined him for discovery and disclosed to Lawyer and the other golf partners information about his health. At the conclusion of the round of golf Lawyer, in response to a question from L., advised L. that he was the lawyer for C Company and could not discuss his business any further with him. No other discussion of the matter occurred.

Lawyer considers that the health problems L. disclosed to him on the golf course are relevant to the litigation on which other member of the firm act. He says it is relevant in these respects:

- (a) it is a factor that could be taken into account in assessing whether or not the suggested offer of settlement at \$100,000 should be accepted, countered, etc.;
- (b) it confirms that there is a potentially legitimate reason for the delayed examinations for discovery, the validity of which has been questioned by other lawyers in the firm and by the client; and
- (c) it will likely impact on the trial date.

Lawyer has asked the Ethics Committee the following questions:

1. Is Lawyer precluded from communicating to C and B, or the members of the firm who represent C and B in the litigation, the fact that he was told by L that he is scheduled for major knee surgery in the next few weeks?
2. Does Lawyer have an obligation to pass this information on to C, B or other members of the firm who represent C or B?
3. Should Lawyer, or the partner handling the litigation for C and B, advise L's lawyer that, during the course of this social event, the Member was told by L about the scheduled knee surgery?

In the Committee's opinion Lawyer owes no duty to L. to decline to pass on information disclosed to Lawyer on the golf course, although the Committee was of the view that Lawyer

should have taken more care to ensure he was not in a position to receive sensitive information from L. Having received the information from L., however, Lawyer is obliged to pass it on to his colleagues in the firm and to the clients, if it is relevant to the case. To do otherwise would be inconsistent with the firm's duty of loyalty to the clients. L.'s lawyer must be advised about the contact that occurred during the golf game. Failure to do so would be sharp practice.

JO/

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