Ethics
Informational Packet

CANDOR TOWARD THE TRIBUNAL

Courtesy of
The Florida Bar
Ethics Department

TABLE OF CONTENTS

RULE 4-3.3 CANDOR TOWARD THE TRIBUNAL

(a) False Evidence; Duty to Disclose. A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer evidence that the lawyer knows to be false. A lawyer may not offer testimony that the lawyer knows to be false in the form of a narrative unless so ordered by the tribunal. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(b) Criminal or Fraudulent Conduct. A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging, or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) Ex Parte Proceedings. In an ex parte proceeding a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

(d) Extent of Lawyer's Duties. The duties stated in this rule continue beyond the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by rule 4-1.6.

Comment

This rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See terminology for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, subdivision (a)(4) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

This rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary

proceeding is not required to present a disinterested exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Lawyers who represent clients in alternative dispute resolution processes are governed by the Rules of Professional Conduct. When the dispute resolution process takes place before a tribunal, as in binding arbitration (see terminology), the lawyer's duty of candor is governed by rule 4-3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by rule 4-4.1.

Representations by a lawyer

An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare rule 4-3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in rule 4-1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with rule 4-1.2(d), see the comment to that rule. See also the comment to rule 4-8.4(b).

Misleading legal argument

Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in subdivision (a)(3), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

False evidence

Subdivision (a)(4) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this rule if the lawyer offers the evidence for the purpose of establishing its falsity.

If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

The duties stated in this rule apply to all lawyers, including defense counsel in criminal cases.

The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact.

The rule generally recognized is that, if necessary to rectify the situation, an advocate must disclose the existence of the client's deception to the court. Such a disclosure can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process that the adversary system is designed to implement. See rule 4-1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus, the client could in effect coerce the lawyer into being a party to fraud on the court.

Remedial measures

If perjured testimony or false evidence has been offered, the advocate's proper course ordinarily is to remonstrate with the client confidentially if circumstances permit. In any case, the advocate should ensure disclosure is made to the court. It is for the court then to determine what should be done – making a statement about the matter to the trier of fact, ordering a mistrial, or perhaps nothing. If the false testimony was that of the client, the client may controvert the lawyer's version of their communication when the lawyer discloses the situation to the court. If there is an issue whether the client has committed perjury, the lawyer cannot represent the client in resolution of the issue and a mistrial may be unavoidable. An unscrupulous client might in this way attempt to produce a series of mistrials and thus escape prosecution. However, a second such encounter could be construed as a deliberate abuse of the right to counsel and as such a waiver of the right to further representation. This commentary is not intended to address the situation where a client or prospective client seeks legal advice specifically about a defense to a charge of perjury where the lawyer did not represent the client at the time the client gave the testimony giving rise to the charge.

Refusing to offer proof believed to be false

Although subdivision (a)(4) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate.

A lawyer may not assist the client or any witness in offering false testimony or other false evidence, nor may the lawyer permit the client or any other witness to testify falsely in the narrative form unless ordered to do so by the tribunal. If a lawyer knows that the client intends to commit perjury, the lawyer's first duty is to attempt to persuade the client to testify truthfully. If the client still insists on committing perjury, the lawyer must threaten to disclose the client's intent to commit perjury to the judge. If the threat of disclosure does not successfully persuade the client to testify truthfully, the lawyer must disclose the fact that the client intends to lie to the tribunal and, per 4-1.6, information sufficient to prevent the commission of the crime of perjury.

The lawyer's duty not to assist witnesses, including the lawyer's own client, in offering false evidence stems from the Rules of Professional Conduct, Florida statutes, and caselaw.

Rule 4-1.2(d) prohibits the lawyer from assisting a client in conduct that the lawyer knows or reasonably should know is criminal or fraudulent.

Rule 4-3.4(b) prohibits a lawyer from fabricating evidence or assisting a witness to testify falsely.

Rule 4-8.4(a) prohibits the lawyer from violating the Rules of Professional Conduct or knowingly assisting another to do so.

Rule 4-8.4(b) prohibits a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer.

Rule 4-8.4(c) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Rule 4-8.4(d) prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice.

Rule 4-1.6(b) requires a lawyer to reveal information to the extent the lawyer reasonably believes necessary to prevent a client from committing a crime.

This rule, 4-3.3(a)(2), requires a lawyer to reveal a material fact to the tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client, and 4-3.3(a)(4) prohibits a lawyer from offering false evidence and requires the lawyer to take reasonable remedial measures when false material evidence has been offered.

Rule 4-1.16 prohibits a lawyer from representing a client if the representation will result in a violation of the Rules of Professional Conduct or law and permits the lawyer to withdraw from representation if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent or repugnant or imprudent. Rule 4-1.16(c) recognizes that notwithstanding good cause for terminating representation of a client, a lawyer is obliged to continue representation if so ordered by a tribunal.

To permit or assist a client or other witness to testify falsely is prohibited by section 837.02, Florida Statutes (1991), which makes perjury in an official proceeding a felony, and by section 777.011, Florida Statutes (1991), which proscribes aiding, abetting, or counseling commission of a felony.

Florida caselaw prohibits lawyers from presenting false testimony or evidence. *Kneale v. Williams*, 30 So. 2d 284 (Fla. 1947), states that perpetration of a fraud is outside the scope of the professional duty of an attorney and no privilege attaches to communication between an attorney and a client with respect to transactions constituting the making of a false claim or the perpetration of a fraud. *Dodd v. The Florida Bar*, 118 So. 2d 17 (Fla. 1960), reminds us that "the courts are . . . dependent on members of the bar to . . . present the true facts of each cause . . . to enable the judge or the jury to [decide the facts] to which the law may be applied. When an

attorney . . . allows false testimony . . . [the attorney] . . . makes it impossible for the scales [of justice] to balance." See *The Fla. Bar v. Agar,* 394 So. 2d 405 (Fla. 1981), and *The Fla. Bar v. Simons,* 391 So. 2d 684 (Fla. 1980).

The United States Supreme Court in *Nix v. Whiteside,* 475 U.S. 157 (1986), answered in the negative the constitutional issue of whether it is ineffective assistance of counsel for an attorney to threaten disclosure of a client's (a criminal defendant's) intention to testify falsely.

Ex parte proceedings

Ordinarily, an advocate has the limited responsibility of presenting 1 side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in an ex parte proceeding, such as an application for a temporary injunction, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

[Revised: 02/01/2010]

FLORIDA BAR ETHICS OPINION
OPINION 04-1
June 24, 2005

Advisory ethics opinions are not binding.

A lawyer whose client has repeatedly stated that the client will commit perjury must withdraw from the representation and inform the court of the client's intent to lie under oath. When the withdrawal and disclosure occur depends on the circumstances and may be made ex parte in camera if permitted by the court.

Note: This opinion was approved by The Florida Bar Board of Governors on October 21, 2005.

RPC: 4-1.2(d), 4-1.6, 4-1.7, 4-1.16, 4-3.3
Statutes: 837.02 and 777.011, Florida Statutes

A member of The Florida Bar has inquired about the appropriate course of conduct in the representation of a client who has stated his intent to commit perjury at his upcoming criminal trial. The client has repeatedly expressed the client's intent to commit perjury and, despite the lawyer's repeated warnings, insists upon testifying falsely. The client has been warned that the lawyer must and will advise the court if a fraud is made upon the court. The lawyer has questioned the lawyer's ethical obligations under this scenario. This inquiry addresses the circumstances when a lawyer definitely knows that the client intends to commit perjury. This is distinct from the many other situations where the lawyer may suspect but does not know that the client intends to commit perjury. This opinion only addresses this specific inquiry.

Many ethics rules relate to this inquiry. Rule 4-1.2(d), Rules Regulating The Florida Bar, prohibits a lawyer from assisting a client in conduct the lawyer knows or reasonably should know is criminal or fraudulent. Rule 4-1.6, the confidentiality rule, which is very broad, applies "to all information relating to the representation, whatever its source." Comment, Rule 4-1.6. However, there are exceptions to the confidentiality rule. Rule 4-1.6(b)(1) requires a lawyer to reveal information necessary to prevent a client from committing a crime. While interpretation of statutes is beyond the scope of an ethics opinion, it appears that it is a crime for a lawyer to permit or assist a client or other witness to testify falsely. See Florida Statutes §§ 837.02 and 777.011.

The "Candor Towards the Tribunal" rule, Rule 4-3.3, provides in pertinent part:

> **(a) False Evidence; Duty to Disclose.** A lawyer shall not knowingly:
>
> (1) make a false statement of material fact or law to a tribunal;
>
> (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

* * *

(4) permit any witness, including a criminal defendant, to offer testimony or other evidence that the lawyer knows to be false. A lawyer may not offer testimony that the lawyer knows to be false in the form of a narrative unless so ordered by the tribunal. If a lawyer has offered material evidence and thereafter comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(b) Extent of Lawyer's Duties. The duties stated in paragraph (a) continue beyond the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by rule 4-1.6 [concerning lawyer-client confidentiality]. [Emphasis added.]

A lawyer's obligation to make disclosures under Rule 4-3.3 is triggered when the lawyer knows that a client or a witness for the client will make material false statements to a tribunal. Under the facts presented, the lawyer knows the client will make a misrepresentation to the court because the client has repeatedly expressed his intent to commit perjury.

The comment to Rule 4-3.3 provides the following guidance:

If a lawyer knows that the client intends to commit perjury, the lawyer's first duty is to attempt to persuade the client to testify truthfully. If the client still insists on committing perjury, the lawyer must threaten to disclose the client's intent to commit perjury to the judge. If the threat of disclosure does not successfully persuade the client to testify truthfully, the lawyer must disclose the fact that the client intends to lie to the tribunal and, per 4-1.6, information sufficient to prevent the commission of the crime of perjury.

A lawyer is required to reveal information that is necessary to prevent a client from committing a crime, including the crime of perjury. Rule 4-1.6(b)(1), Rules Regulating The Florida Bar. The comment to Rule 4-1.6 provides:

It is admittedly difficult for a lawyer to 'know' when the criminal intent will actually be carried out, for the client may have a change of mind.

* * *

Where practical the lawyer should seek to persuade the client to take suitable action. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to the purpose.

If the lawyer knows that the client will testify falsely, withdrawal does not fulfill the lawyer's ethical obligations, because withdrawal alone does not prevent the client from committing perjury. Rather, a lawyer must disclose to the court a client's intention

to commit perjury. Timing of the disclosure may vary based on the facts of the case and, in some cases, may be made ex parte in camera. Ultimately, the method of disclosure is subject to the discretion of the court. This disclosure causes a conflict of interest between the lawyer's ethical obligation to disclose and the client's interest. Rule 4-1.7, Rules Regulating The Florida Bar. Due to the conflict, the lawyer must move to withdraw. Rule 4-1.16(a), Rules Regulating The Florida Bar. Notwithstanding good cause to withdraw, if the court requires the lawyer to continue the representation, the lawyer must comply with the court's order. Rule 4-1.16(c), Rules Regulating The Florida Bar. A lawyer may offer the client's testimony in the narrative only if the court orders the lawyer to do so. Rule 4-3.3(a)(4), Rules Regulating The Florida Bar.

In the event that the client does not give advance notice to the lawyer prior to testifying falsely, Rule 4-3.3(a)(2) and the comment require the lawyer to take reasonable remedial measures to rectify the fraud. The comment to Rule 4-3.3 states:

> When false evidence is offered by the client, however, a conflict may arise between the lawyer's duty to keep the client's revelations confidential and the duty of candor to the court. Upon ascertaining that material evidence is false, the lawyer should seek to persuade the client that the evidence should not be offered or, if it has been offered, that its false character should immediately be disclosed. If the persuasion is ineffective, the lawyer must take reasonable remedial measures.
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> * * *
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> If perjured testimony or false evidence has been offered, the advocate's proper course ordinarily is to remonstrate with the client confidentially. If that fails, the advocate should seek to withdraw if that will remedy the situation....[I]f withdrawal will not remedy the situation or is impossible and the advocate determines that disclosure is the only measure that will avert a fraud on the court, the advocate should make disclosure to the court. It is for the court then to determine what should be done-making a statement about the matter to the trier of fact, ordering a mistrial, or perhaps nothing.

In conclusion, when a lawyer is representing a criminal client who has stated an intention to commit perjury, the lawyer is obligated, pursuant to Rules 4-1.2(d), 4-1.6(b)(1) and 4-3.3(a)(4), to disclose the client's intent to the court. If the lawyer is not given advance notice of the client's intent to lie, and the client offers false testimony, then the lawyer must convince the client to agree to disclosure and remediation of the false testimony; failing that, the lawyer must disclose to the court anyway. Absent client consent, the lawyer's disclosure of the client's false testimony or intent to offer false testimony will create a conflict between the lawyer and the client requiring the lawyer to move to withdraw from representation pursuant to Rule 4-1.16(a). If the court requires the lawyer to remain in the case, despite good cause for withdrawal, the lawyer must do so. Rule 4-1.16(c). It is then up to the court to determine what should be done with the information. This opinion is limited to the situation presented when a lawyer knows that

his or her client is going to commit perjury. This opinion does not address the situation when a lawyer merely suspects but does not know that the client intends to commit perjury.

FLORIDA BAR ETHICS OPINION
OPINION 90-6 (Reconsideration)
May 29, 2009

Advisory ethics opinions are not binding.

A lawyer who learns that a criminal defendant is proceeding under a false name before the lawyer agrees to represent the criminal defendant who cannot persuade the client to correct the name must decline representation. A lawyer who learns that a criminal defendant who is an existing client is proceeding under a false name must withdraw from representation and must admonish the client not to commit perjury, but cannot disclose the client's use of the false name to the court unless the client makes an affirmative misrepresentation to the court regarding the name.

Note: This opinion was approved by The Florida Bar Board of Governors on May 29, 2009.

RPC: 4-1.2(d), 4-1.4, 4-1.6(b), 4-1.16(a), 4-3.3, 4-3.4(c), 4-4.1, 4-8.4(d)
Opinions: 90-6 (withdrawn)

In former Florida Ethics Opinion 90-6, a criminal defense attorney inquired about an attorney's obligation upon discovering that a client who is a defendant in a pending criminal proceeding gave an alias when arrested, and proceedings have been brought under the alias. The attorney asked whether this information must be revealed to the court and, if so, whether the attorney must inform the court of the client's true identity. Former Florida Ethics Opinion 90-6 concluded that a criminal defense attorney who learns that his or her client is proceeding under a false name may not inform the court of this fact due to the attorney-client privilege, the client's constitutional right to effective assistance of counsel, or the client's constitutional privilege against self-incrimination, but that the attorney may not assist the client in perpetrating or furthering a crime or a fraud on the court. The opinion further concluded that if the court requests information about the client's identity or record, "the client and defense counsel may answer truthfully (if the client, after consultation with counsel, decides that doing so is in his or her best interests) or may decline to answer on the basis of any applicable privilege."

The Committee withdrew Florida Ethics Opinion 90-6 at its March 16, 2007 meeting. In order to provide guidance to Florida Bar members on this issue, the Board of Governors issues this opinion.

Rule of Professional Conduct 4-3.3(a) states in pertinent part:

> **(a) False Evidence; Duty to Disclose.** A lawyer shall not knowingly:
>
> (1) make a false statement of material fact or law to a tribunal;
>
> (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client[.]

Additionally, Rule 4-1.2(d) prohibits a lawyer from assisting a client in criminal or fraudulent conduct, while Rule 4-8.4(c) prohibits a lawyer from "dishonesty, fraud, deceit, or misrepresentation."

The mere act of filing pleadings under the false name used by the client or responding to the alias when called at a docket sounding does not involve misrepresentation to the court. However, the lawyer cannot permit the client to lie and therefore, if asked, the client must give his or her true name or invoke a privilege in refusing to respond.

The Board will address the following scenarios: 1) the lawyer learns in the initial consultation before the lawyer accepts representation that a criminal defendant is being charged and proceeding under a false name; and 2) the lawyer learns after representation begins that a criminal defendant client is being charged and proceeding under a false name.

If the lawyer learns that the client has given a false name at the outset of the representation, before the lawyer has accepted representation of the criminal defendant in the case, the lawyer must decline to represent the client on the basis of the false name unless the prospective client agrees to disclose to the court that the client is proceeding under a false name. See Rules 4-1.2(d), 4-1.4, 4-1.16(a), 4-3.3 (a)(2) and (b), 4-3.4(c), 4-4.1, and 4-8.4, Rules of Professional Conduct.

If the lawyer learns of the false name after representation has begun, the lawyer should inform the client that the lawyer cannot assist the client in misleading the court regarding the client's identity, and the lawyer should attempt to persuade the client to disclose that the client is proceeding under a false name. Rules 4-1.2(d), 4-1.4, 4-1.6(b)(1), 4-3.3(a)(2) and (b), 4-3.4(c), and 4-8.4, Rules of Professional Conduct. If the client refuses to disclose the information and insists that the client will maintain the false name throughout the case, the lawyer must move to withdraw from the client's representation. Rules 4-1.2(d), 4-1.4, 4-1.16(a), 4-3.3(a)(2) and (b), 4-3.4(c), and 4-8.4, Rules of Professional Conduct. The lawyer must counsel the client not to commit perjury. Rules 4-1.2(d), 4-1.14, 4-3.3(a)(2) and (b), 4-3.4(c), and 4-8.4, Rules of Professional Conduct.

If the court declines to permit withdrawal, the lawyer must continue the representation. Rule 4-1.16(c), Rules of Professional Conduct. The lawyer may not inform the court of the false name except when the client affirmatively lies to the court concerning his or her true name.

All of the above scenarios presuppose that there is nothing in the court file to indicate that the client has been charged and is proceeding under a false name. If the client has been charged as a "John Doe" or "Jane Doe" and clearly is openly refusing to disclose his or her identity, there is no misrepresentation to the court and the above rules are not applicable. See Rule 4-3.4(c). Under this circumstance, the lawyer need not specifically disclose to the court that the client is proceeding under a false name. Rule 4-3.3, Rules of Professional Conduct. Additionally, if the court file clearly indicates that the client is known by multiple names, then the court is on notice that the client may be proceeding under a false name and no remedial measures by the criminal defense lawyer are required.

FLORIDA BAR ETHICS OPINION
OPINION 90-1
July 15, 1990

Advisory ethics opinions are not binding.

A criminal defense counsel who learns that his or her client has left the state for the purpose of avoiding a court appearance may not, under most circumstances, divulge such information until required by the court at the time of the scheduled appearance.

Statute: F.S. §843.15

When an attorney tells the court his or her client has left the state with the intent to jump bail, it puts attorney and client at cross-purposes; it makes the attorney a potential witness against the client in a potential criminal prosecution for the separate crime of bail jumping; and it effectively destroys the attorney-client relationship.

Avoiding interference with, or at least preserving, the Constitutionally created and Constitutionally protected attorney-client relationship is fundamental to a correct interpretation of what is, in this situation, ethical conduct.

For an attorney, based on anything less than verified and certain facts, to tell the court a client is out of state for purpose of avoiding a court appearance, would violate the attorney's obligation to give that client zealous representation, would destroy the attorney-client relationship, and would be unethical.

The crime of jumping bail is defined by Florida Statutes, Section 843.15, which says the crime occurs when a defendant in a criminal case is on release pre-trial, or pending sentencing, or pending appeal, and the defendant "willfully fails to appear before any court or judicial officer as required. . . ." The crime occurs when the defendant is required to be before the court and, willfully, fails to be there. By statutory definition, the offense occurs when the defendant fails to appear in court as required—not before then. So a distinction must be made as to counsel's ethical obligations at the time of the required court appearance, and counsel's ethical obligations prior to the required court appearance.

At the time of the required court appearance, when the case is called and the defendant fails to appear, and the judge turns to counsel and asks about the defendant's whereabouts, defense counsel owes an explanation to the court, to the extent counsel has one, and to the extent that giving it does not violate attorney-client privilege. If the attorney is able to tell the court where the client is, and why the client is there rather than in court, then the attorney is obliged to tell the court those things—but only to the extent that the lawyer can give up that information without violating attorney-client confidentiality. Barring other facts not present here, an attorney's actual knowledge of where a client is located, at the present moment, is not privileged information.

The following appears to be the proper way to handle it. Counsel may give the court such answers as counsel has, to the extent is does not violate confidential communications between

attorney and client, and if that information is all the attorney has, then it is an easy matter to tell the court counsel has no further information, privileged or otherwise. But if some of the information counsel has is privileged, counsel may tell the court what information counsel has that is not privileged, and then advise the court that counsel does have additional information but believes it privileged and so invokes that privilege on the client's behalf— leaving it up to the court to make such further inquiry and such rulings on the extent of the privilege as it deems necessary.

Turning now to the question of counsel's ethical obligations prior to that required court appearance: What is criminal defense counsel's obligation when counsel first learns, in advance of the next scheduled court appearance, that the client has fled the state already, with intent to avoid future court appearances in the case?

On some subjects—and this is one—ethics opinions are of little real guidance to practicing attorneys unless they take into account the realities of how clients deal with lawyers and lawyers with clients. Drawing on the experiences of lawyers on the Professional Ethics Committee who now handle and/or have handled criminal defense cases, the following practical observation is made. Criminal defendants when talking with their lawyers (in the attorney's office or by telephone, and especially when clients call from out of state or out of the country) often think out loud about skipping out, or come right out and say they plan not to show up for court again; and yet, in a great majority of these cases, when the time comes, they do show up for court, in spite of what they have said. One may assume they show up based at least in part on the urgings of their lawyers in response to what they said. But, regardless the reasons why they usually show up for court, it is a result that would not be obtained if lawyers, upon hearing clients say they are going to skip future court appearance, were required to immediately tell the court what their clients have just said in that regard. Such conduct by counsel would quickly destroy the attorney-client relationship, and it would be doing so in situations that, in reality, most often do not turn out to be a problem—which would serve the interest of neither the clients nor the administration of justice.

Adding to the balance the Constitutionally created and protected attorney-client relationship, and the practicalities of how attorneys and clients deal with each other, and the Rules Regulating the Florida Bar, the following appears to be the proper response to this part of the inquiry.

So long as there remains any possibility that counsel may be able to effect a court appearance by a client, in spite of the client's claims and anybody else's claims that the client will not be going to court when required, experience teaches and ethics requires that effectuating the client's appearance is what counsel must spend his or her energies trying to accomplish. Working towards resolving the anticipated problem by effectuating the client's appearance, rather than telling the court about the anticipated problem, is what is ethically required of the lawyer.

Prior to the date of the required court appearance, only when it reaches the point where counsel knows with reasonable certainty that the client's avoidance of the court's authority is a willful and, for all practical purposes, an irreversible fact—only then would counsel be ethically obliged to step forward and advise the Court of the situation.

As to the question of counsel's ethical obligation to advise the bail bondsman, no such obligation is imposed by the Rules Regulating the Florida Bar. As a practical matter, however, if there is a bail bondsman on the case, to accomplish the client's appearance in court it may be necessary to consider calling on the client's bail bondsman for assistance.

A situation similar to the one inquired about, but which should not be confused with it, is where the court makes it a special condition of bond that the defendant not leave the state. That special condition of pre-trial release make the mere act of leaving the state a completed violation of bond, whether or not the defendant intends to return in time for his or her next court appearance. If that special condition is imposed, then a criminal defense lawyer is under obligation to report a client is out of state, when counsel is certain the client is, in fact, out of state in violation of that special condition, at the time of reporting. If, instead, the client advises counsel of this violation after it is completed—after leaving the state in violation of bond and returning again—then what the client tells counsel is privileged attorney-client communication about past acts, which the attorney may not reveal.

The question posed and answer given also have nothing to do with any obligation a court specifically imposes on defense counsel as a special condition of a client's release on bond—as, for example, when the court makes it a special condition that the defendant telephone his attorney once each day and that counsel immediately advise the court if the defendant fails to comply. (Such conditions are sometimes sought by defendants and their attorneys, to avoid having to report instead to probation officers or court officials as a condition of bond.)

FLORIDA BAR ETHICS OPINION
OPINION 86-3
December 15, 1986

Advisory ethics opinions are not binding.

A defense lawyer has no obligation to disclose a client's record of prior convictions in order to prevent a court from imposing sentence on the basis of incomplete or inaccurate information about the client's record, provided that neither the defense lawyer nor the defendant affirmatively misrepresented to the court that there was no priors.

CPR: DR 4-101, EC 4-4, DR 7-101(A), DR 7-102
Opinion: 75-19
Case: *Meehan v. State*, 397 So.2d 1214 (Fla. 2d DCA 1981)

Numerous defense attorneys have requested an advisory opinion concerning their obligation to disclose, or not to disclose, before a client is sentenced for a criminal offense, that the client has a record of prior convictions. The question usually arises in DUI cases. It appears that prosecutors sometimes do not discover the defendant's out-of-state prior convictions. The defense attorney knows of the priors either because the client volunteered the information or because the attorney independently discovered the priors in the course of the representation. Repeat DUI offenders are sentenced more harshly than first-time offenders.

Defense counsel's information about the client's prior convictions, volunteered by the client or independently discovered by the attorney in the course of the representation, is either a confidence or a secret of the client within the meaning of DR 4-101. DR 4-101(A) defines "confidence" as "information protected by the attorney-client privilege under applicable law." "Secrets" are defined as "other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be *likely to be detrimental to the client.*" EC 4-4 explains that an attorney's ethical obligation to guard the confidences and secrets of a client "exists without regard to the nature or source of information or the fact that others share the knowledge."

With certain limited exceptions, DR 4-101 forbids an attorney to reveal confidences or secrets except with the consent of the client. The exception that may be applicable to information about prior convictions is DR 4-101(C)(2), which permits a lawyer to reveal confidences or secrets "when permitted under disciplinary rules."

An attorney's conduct in judicial proceedings is governed by Canon 7 of the Code of Professional Responsibility. DR 7-101(A) forbids an attorney to intentionally:

> (3) Prejudice or damage his client during the course of the professional relationship, except as required under DR 7-102(B).

DR 7-102 provides in pertinent part:

> (A) In his representation of a client, a lawyer shall not:

(3) Conceal or knowingly fail to disclose that which he is required by law to reveal;

(4) Knowingly use perjured testimony or false evidence;

(5) Knowingly make a false statement of fact; . . .

(B) A lawyer who receives information clearly establishing that:

(1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to reveal the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal."

With reference to DR 7-102(A)(3), the Committee is unaware of any law that places an affirmative obligation upon criminal defense counsel to disclose his client's criminal record. Under DR 7-102(A)(4), a lawyer should not permit his client to falsely state to the court that the client has no prior convictions. Under DR 7-102(A)(5), a lawyer could not himself falsely state to the court that the client had no priors. DR 7-102(B)(1), in conjunction with DR 4-101(C)(2), would require a lawyer whose client had falsely stated to the court that there were no priors to call upon his client to rectify such fraud on the court and to do so himself if the client refused. Opinion 75-19.

On the basis of the disciplinary rules and the ethical obligations discussed above, the Committee reaches the following conclusions: (1) When it appears to the lawyer that the court is about to impose sentence based on incomplete or inaccurate information as to the defendant's record of prior convictions, the lawyer has no duty to correct that information, provided that the lawyer or the client had not affirmatively misrepresented to the court that there were no priors. (2) If asked directly by the court whether the client has any prior convictions, the attorney must protect his client's constitutional guarantees. See, *e.g., Meehan v. State,* 397 So.2d 1214 (Fla. 2d DCA 1981).

FLORIDA BAR ETHICS OPINION
OPINION 82-3
May 20, 1982

Advisory ethics opinions are not binding.

An attorney who learns that his former client has committed a fraud upon a person or tribunal during the attorney's representation may reveal the fraud to the court only if the client's fraud is clearly established under the guidelines of DR 7-102(B).

Note: Current Rule Regulating The Florida Bar 4-3.3 addresses only fraud on the tribunal, not fraud on a third party.

CPR: DR 4-101, DR 7-102, EC 8-5
Opinion: 75-19

Chairman Ervin stated the opinion of the committee:

A Florida attorney inquires whether he has received information clearly establishing that his former client has committed a fraud upon a person or tribunal during the attorney's representation, so as to give rise to a duty of the attorney to take further action pursuant to DR 7-102(B), Florida Code of Professional Responsibility.

The attorney recites that during the course of his representation of two clients, he prepared for execution by one client, and by an employee-witness, affidavits reciting the facts and date of resignation of the client as a director and officer of a corporation. As a part of pending proceedings, the other client, a relative of first client, testified at deposition as to fact and date of resignation. The affidavits were submitted to the court during pretrial proceedings. The fact of resignation and time of same were of significant importance to the ongoing litigation.

The attorney has, with approval of the court, withdrawn from representation of the clients. He recites his present doubt as to the truthfulness of the prior affidavits and depositions based upon undescribed "credibility problems" he experienced with the clients prior to withdrawal, together with the fact that the client signed one written communication to the lawyer in a form indicating corporate officer status long after the purported date of resignation, and later fabricated and attempted to persuade the attorney to accept a backdated, substitute written communication not so indicating.

The attorney recites that his two former clients and the employee-witness have steadfastly maintained that the affidavits and depositions are true.

Since the information which has caused the attorney's doubt was secured from the client during the course of representation, DR 4-101 of the Florida Code must be first considered. That rule provides, in pertinent part, that:

DR 4-101 Preservation of Confidences and Secrets of a Client.

(A) "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

(B) Except when permitted under DR 4-101(C) and (D), a lawyer shall not knowingly:

(1) Reveal a confidence or secret of his client.

* * *

(C) A lawyer *may* reveal:

* * *

(2) Confidences or secrets when permitted under disciplinary rules.

* * *

(D) A lawyer *shall* reveal:

(1) Confidences or secrets when required by law provided that a lawyer required by a tribunal to make such a disclosure may first avail himself of all appellate remedies available to him.

(2) The intention of his client to commit a crime and the information necessary to prevent the crime.

* * *

(Emphasis supplied.)

The information possessed by the inquiring attorney was gained in the professional relationship and its disclosure would be embarrassing or detrimental to the client, so it is clearly a "secret," and may be a "confidence" as well, under the terms of DR 4-101(A). Under the terms of subsection (B), the information may not be disclosed by the attorney unless disclosure is authorized, or required, by one of the exceptions set forth in subsections (C) or (D).

Subsection (D) would appear inapplicable in that no law has been cited compelling an attorney to disclose past untruthfulness of his client; no tribunal seeks to compel disclosure; and an attorney is not required under subsection (2) to reveal a completed crime (i.e., perjury) by his client. It is noted that DR 4-101(D)(2) of the Florida Code is substantially broader than the corresponding American Bar Association provision in requiring an attorney to disclose his client's intention to commit any crime. The Florida provision is, however, prospective in operation and applies only to intended, but not yet committed, crimes of a client.

Subsection (C) of DR 4-101 requires further analysis. That provision authorizes an attorney to reveal confidences or secrets of a client "when permitted under disciplinary rules." This provision, in turn, makes pertinent DR 7-102(B) of the Florida Code, which provides:

DR 7-102 Representing a Client Within the Bounds of the Law.

*** * ***

(B) A lawyer who receives information *clearly establishing* that:

(1) His client *has*, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal.

(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

(Emphasis supplied.)

The above-quoted provision was considered at length in prior Advisory Opinion 75-19 wherein it was noted that the corresponding provision of the American Bar Association Code had been amended to except from the duty of disclosure information protected as privileged communication.

Guided by the absence of such an exception in the Florida Code, in Advisory Opinion 75-19 this Committee expressed its opinion that an attorney, upon learning from his client that the client had deliberately lied at a deposition, was required to withdraw from the representation and to reveal the fraud to the court if the client refused to rectify the false testimony.

A contrary conclusion as to duty of disclosure is at least arguably suggested by EC 8-5 of the Florida Code, which provides as follows:

EC 8-5 Fraudulent, deceptive, or otherwise illegal conduct by a participant in a proceeding before a tribunal or legislative body is inconsistent with fair administration of justice, and it should never be participated in or condoned by lawyers. *Unless constrained by his obligation to preserve the confidences and secrets of his client*, a lawyer should reveal to appropriate authorities any knowledge he may have of such improper conduct.

(Emphasis supplied.)

The Committee is of the opinion, however, that there is no real conflict or inconsistency between DR 7-102(B) and EC 8-5. Where the circumstances required by DR 7-102(B) are present, the attorney is not constrained by an obligation to preserve the confidences or secrets of his client (as to the fraud) and disclosure must be made. This is, of course, consistent with the aspirational guideline of EC 8-5.

On the other hand, where the requirements of DR 7-102(B) are not met, then pursuant to DR 4-101(B), the attorney is so constrained and should not make disclosure. This circumstance is excepted from the aspirational guideline of EC 8-5. Properly viewed, EC 8-5 is merely reflective of the commands of DR 4-101(B) and exceptions recognized in that subsection.

The Committee, therefore, adheres to its prior Advisory Opinion 75-19, to the effect that under the circumstances described in DR 7-102(B) of the Florida Code, an attorney is required to disclose even confidences or secrets of his client. The Supreme Court of Florida, in adopting the Florida Code in its present form, has recognized and mandated this limited exception to the ordinary attorney-client relationship in order to preserve the integrity of the system of administration of justice.

The exception is, however, limited by its own terms. DR 7-102(B) requires disclosure only where the attorney:

> . . . receives information *clearly establishing* that:
>
> (1) his client has, *in the course of the representation*, perpetrated a fraud upon a person or tribunal. . . .
>
> (Emphasis supplied.)

Thus, the Supreme Court has commanded that the confidentiality of the attorney-client relationship will be sacrificed only where the client's fraud is clearly established to have occurred during the representation.

In prior Advisory Opinion 75-19 the client had expressly confirmed to the attorney that he (the client) knew the true facts and had deliberately lied under oath to conceal his assets. Thus, the attorney possessed more than adequate information "clearly establishing" the client's fraud on the tribunal during the lawyer's representation and disclosure was required.

No such definitive factual situation is presented in this inquiry, in that: (1) The inquiring attorney's former clients, and a third party, steadfastly maintain that the prior statements regarding corporate resignation were true; (2) the form of signature indicating to the contrary could conceivably have been simple mistake; (3) the attempt to substitute communications to the attorney could have been intended to correct a potentially embarrassing mistake rather than conceal evidence of perjury; and (4) the inquiry is based in part on undescribed "credibility problems" experienced between the clients and inquiring attorney during the representation.

Under such circumstances, this Committee is of the opinion that it can provide guidance only in the form of emphasizing that under DR 7-102(B) the test or standard is that the information possessed must "clearly establish" fraud on the tribunal. The Committee is not a fact-finding body, nor is it able to glean from limited correspondence, and then weigh, all the subjective factors and factual considerations which would enter into the determination of whether fraud is "clearly" established.

The responsibility for this factual determination must remain with the inquiring lawyer.

The foregoing is the opinion of a majority of the Professional Ethics Committee and is hereby adopted as the Committee's proposed advisory opinion. One member of the Committee would agree with the "clear establishment" test as set forth above, but would apply a continuing wrong principle if the subject litigation was not concluded. One member of the Committee is of

the opinion that the facts as presented fall short of “clearly establishing” fraud on a tribunal, and that the Committee’s opinion should proscribe disclosure.

FLORIDA BAR ETHICS OPINION
OPINION 75-19
March 15, 1977

Advisory ethics opinions are not binding.

An attorney who learns from his client that the client deliberately lied at a deposition must withdraw from the representation and must reveal the fraud to the court if the client refuses to rectify it.

Note: This opinion was affirmed by the Professional Ethics Committee at its meeting on June 18, 1998. The Committee affirmed that a material misrepresentation during a deposition, regardless of whether the deposition has been filed with the court, requires that the attorney take remedial measures under Rule 4-3.3. Subsequent to the issuance of this ethics opinion and its affirmance by the Committee, the comment to Rule 4-3.3 was amended in 2006 to state that the rule "applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition." The Supreme Court cited to the comment in The Florida Bar v. Dupee, 160 So.3d 838 (Fla. 2015), suspending a lawyer who failed to correct the false testimony of a client at a deposition.

CPR:	EC 7-6, EC 7-26; DR 4-101(B),(C) and (D), DR 7-102(B)(1) *[DR 7-102(B)(1) superseded by Rule 4-3.3]*
Opinions:	ABA Formal 268, 274. 341; ABA Informal 1314, 1318
Case:	*McKissick v. United States*, 379 F.2d 754 (5th Cir. 1967)
Misc.:	Drinker, *Legal Ethics*, p. 141

Vice Chairman Lehan stated the opinion of the committee:

A lawyer inquires as to whether he has a duty to disclose perjury committed by his client in a divorce proceeding deposition wherein the client lied as to certain assets. The lawyer was aware of the true facts during the deposition but was not aware that the client had deliberately lied until after the deposition when the lawyer, in private conversation with the client, asked whether the client knew the true facts and the client responded that he did and that he had deliberately lied to conceal assets. In the inquiry, the lawyer recognizes his duty to withdraw from the employment, and the Committee unanimously agrees.

DR 7-102(B)(1) provides that "A lawyer who receives information clearly establishing that . . . his client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal." The majority of the Committee feels that a fraud has been perpetrated upon the court and the opposing party by such perjury in a deposition and that further fraud would be perpetrated by permitting use in litigation of a perjured deposition, such as the one referred to in the inquiry, or by later testimony in like fashion before the court if the deposition itself should not be used in evidence.

The inquiry is silent as to whether the lawyer, upon learning of the perjury, specifically called upon the client to rectify same. Certainly the lawyer has a duty to do so. For the purpose of this opinion the Committee finds implicit in the inquiry the facts that the lawyer did so call upon the client and that the client refused to rectify the perjury.

DR 7-102(B)(1) does not specifically refer to information received from the lawyer's client; however, neither does it purport to limit in any way the sources from which information of the type described may be received. Therefore the Committee majority feels that that provision of the CPR is inclusive of information from clients. By referring to the requirement that the lawyer call upon the client to rectify the fraud and, if the client refuses, the lawyer shall reveal the fraud to the court, the provision may contemplate implicitly that such revelation to the court will necessarily involve the client as a source of at least part of such information.

Under Canon 4, relating to confidences of a client, DR 4-101(D)(2) provides that "A lawyer shall reveal . . . the intention of his client to commit a crime and the information necessary to prevent the crime." Although under the circumstances indicated in the inquiry the perjury had already been committed when the lawyer ascertained positively that the client had deliberately lied, the inquiry would seem to involve either further use of the deposition, which would involve at least furtherance of the crime, or, if the client were to testify in court, information concerning the intention of the client to perjure himself before the court. Therefore, 4-101(D)(2) would appear applicable. See also *McKissick v. United States*, 379 F. 2d 754, 761 (5th Cir. 1967), saying that perjury is a continuing offense so long as allowed to remain in the record to influence the outcome.

Other provisions of Canon 4 are relevant. DR 4-101(B) provides that a lawyer shall not reveal confidences of his client "except when permitted under DR 4-101(C) and (D)." Under 4-101(C), "a lawyer may reveal . . . confidences or secrets when permitted under disciplinary rules."

EC 7-26 provides that "The law and disciplinary rules prohibit the use of fraudulent, false, or perjured testimony or evidence," and EC 7-6 states that a lawyer "may not do anything furthering the creation or preservation of false evidence."

In short, the Committee majority feels that the attorney-client privilege is not to be preserved at all costs, or at the cost of the principles represented by DR 7-102(B); that the Code of Professional Responsibility has specific application to the present inquiry; and that the attorney must disclose the fraud to the court. It may be that in most such situations the lawyer's action in calling upon the client to rectify the fraud would dispose of the problem so that the lawyer need not himself make disclosure to the court.

In *McKissick v. United States*, 379 F. 2d 754, 761, 762 (5th Cir. 1967), which involved a lawyer's report to the court of a client's admission to the lawyer of perjury, the Fifth Circuit took the strong position that the lawyer fulfilled his duty in so reporting to the court and that if he had not done so, he would have been subject to discipline. In a footnote the Fifth Circuit said:

> Drinker, *Legal Ethics* 141 (1953): "A lawyer learning of fraud practiced by his client on a court * * * which the client declines to disclose must inform the

> injured parties, and withdraw from the case, despite Canon 37 [of the Canons of Professional Ethics of the American Bar Association, this Canon covering the lawyer's duty to preserve his client's confidence]." See also Canon 29 which provides in part: "The counsel upon the trial of cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities." We feel this duty may be equally discharged by disclosure to the court itself. Disciplinary measures have been successfully taken against attorneys who have continued with a civil case knowing that their clients had presented perjured testimony . . . *In re King*, 7 Utah 2d 258, 322 P. 2d 1095 (1958) the court commented, "We cannot permit a member of the bar to exonerate himself from failure to disclose known perjury by a * * * statement * * * he had a duty of nondisclosure so as to protect his client which is paramount to his duty to disclose the same to the court, of which he is an officer, and to which he in fact, owes a primary duty under circumstances such as are evidenced in this case." 322 P. 2d at 1097. But compare Gold, Split Loyalty: An Ethical Problem for the Criminal Defense Lawyer, 14 Clev.-Mar. L. Rev. 65, 69-70(1965).
>
> 379 F. 2d at p. 761, N.2.

This Committee opinion has reference only to such crime and type of fraud committed by the client in the course of the lawyer's representation of the client.

The Committee recognizes that the current ABA version of the Code of Professional Responsibility includes amendment of DR 7-102(B) to specifically provide for the conflict under these circumstances between a lawyer's duty to the court and his duty to his client. That ABA version differs from the Florida CPR in having, by such amendment, added the following proviso to DR 7-102(B): "except when the information is protected as privileged communication." See ABA Formal Opinion 341 and ABA Informal Opinions 1314 and 1318. Whether the Florida Code of Professional Responsibility should also be so amended would be a matter for the consideration of the Supreme Court of Florida.

Two members of the Committee feel that disclosure of some type by the lawyer is necessary but that the lawyer should simply advise the Court that use of the deposition in favor of the client would, for reasons which the lawyer cannot disclose, constitute a fraud upon the court.

A substantial minority of the Committee feels that the protection of the confidences of a client is of paramount importance; that Canon 4 specifically concerns protection of confidential information received from a client whereas Canon 7 does not specifically relate to information from the client; that under the inquiry the perjury had already been committed, therefore DR 4-101(D)(2) does not apply; and that the attorney should resign from the employment and take no further action. See ABA Formal Opinion 268 and ABA Formal Opinion 274, both written under the Canons of Professional Ethics. Opinion 268 states: "While ordinarily it is the duty of a lawyer, as an officer of the court, to disclose to the court any fraud that he believes is being practiced on the court, this duty does not transcend that to preserve the client's confidences." Also, the Committee minority feels that the exception added to the ABA version of DR 7-102(B)

should be found implicit in Florida DR 7-102(B) and that, in any event, the Florida Supreme Court should be asked to so amend the Florida Code of Professional Responsibility for the reasons stated in ABA Formal Opinion 341.