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Informal Opinion 2010-3

Duty To Disclose Contents Of File To Co-Counsel; Is There An Obligation To Move To Disqualify Counsel?

This opinion addresses two questions. Must counsel make the contents of her file available to co-counsel when counsel believes co-counsel has a conflict of interest? If counsel believes co-counsel has a conflict of interest, must counsel file a motion to disqualify co-counsel?

The client is a plaintiff in one suit and is a defendant in two suits all arising out of a fire. The same lawyer represents him in the three suits. In one suit the client sues his insurance carrier. In a second suit, his business tenants sue him for damages caused by the fire. In the third suit, a second business tenant sues the client and it is in these two suits that the lawyer appears as co-counsel with the requestor. The lawyer seeking our advice is defense counsel provided to the client by the client's insurer. Co-counsel has requested that the lawyer turn over to him all communications the lawyer has had with the insurance carrier.

We believe that the lawyer should not turn over any contents of the file without first receiving the informed consent of the client. Rule of Professional Conduct 1.6(a). The lawyer

should advise the client concerning the advantages and risks to the client of turning over file materials to co-counsel. If the client directs the lawyer to grant co-counsel access to the file, the lawyer must comply unless substantial grounds exist to deny the request. See CBA Informal Op, 94-12 (1994), CBA Formal Op.31 (Rev. 1988), CBA Informal Op, 98-2 (1998) [client entitled to materials subpoenaed from other party], CBA Informal Op. 96-4 (1996) [client not entitled to review ex-spouse's psychiatric record protected by statute]. CBA Informal Op.92-21 [client entitled to copy of title search and abstract.] 1 Restatement of the Law Governing Lawyers sec. 46(2). ABA Informal Op.1376 [Internal memos and notes created for the lawyer's own purposes need not be made available to clients].

In response to the second question, it is our opinion that the Rules do not require a lawyer to file a motion to disqualify another lawyer in a case. Whether a lawyer may file a motion to disqualify involves the sound exercise of professional discretion and, before filing, requires the consent of the client. Connecticut Rules of Professional Conduct 3.1, and 1.2(a). The Committee is not in a position to determine whether co-counsel has a conflict of interest.

In summary, it is our opinion that you need not turn over material from a client's file unless the client directs you to, after consultation. The Rules of Professional Conduct do not require you to file a motion to disqualify co-counsel.

THE COMMITTEE ON PROFESSIONAL ETHICS

By _____
Wick R. Chambers, Chair