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Informal Opinion 08-02

May A Lawyer, With Her Client's Consent, Write a Letter On Behalf of a Client And Sign The Client's Name With the Intent of Hiding the Fact of Representation?

We have received an inquiry to opine on the following set of facts:

A client has (as principal) executed a limited power of attorney which authorizes the requestor attorney to act as the client's agent and sign correspondence in the client's name to, inter alia, credit reporting agencies in connection with credit reporting inaccuracies. The requestor attorney indicates that correspondence that appears to be sent from and signed by the client is more likely to achieve the desired result than correspondence sent from and signed by the attorney. The attorney inquires if such correspondence violates the Rules of Professional Conduct.

This client request implicates Rules 4.1(1) and Rule 8.4(3). Rule 4.1(1) provides that "[i]n the course of representing a client a lawyer shall not knowingly (1) "[m]ake a false statement of material fact or law to a third person." Rule 8.4(3), in turn, provides that "[i]t is professional misconduct for a lawyer to "[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

Based on the request, it is the Committee's view that a lawyer who signs a document in the client's name (for the admitted purpose of persuading a third party into believing that the document was signed by the client rather than the lawyer acting in a representative capacity) violates each Rule. With respect to Rule 4.1, a signature that on its face purports to be a client's (which in fact is not) is "false". Moreover, the requestor's submission makes clear that the false signature is "material" because the requestor states that sending letters to credit reporting agencies in this fashion is "much more likely to achieve the desired result." For similar reasons, it is the Committee's view that signing a client's name to a

document without disclosing that the attorney is so doing in a representative capacity violates Rule 8.4(3).

The Committee underscores that this opinion responds to a narrow question based on the specific facts presented. The Committee recognizes that the power of attorney described in the request permits the attorney to send letters and execute documents to third parties as a representative of the client, and this opinion does not purport to restrict the attorney's ability to do so. The Committee is also not opining whether the lawyer may assist a client in preparing letters to third parties that the client ultimately signs in his or her own name. However, it is the Committee's opinion that if the requestor in the aforementioned circumstances signs a letter on behalf of a client pursuant to a limited power of attorney, the signature should reflect that the lawyer is in fact the person signing the letter and that the lawyer is doing so in a representative capacity.

THE COMMITTEE ON PROFESSIONAL ETHICS

By Wick R. Chambers

Wick R. Chambers, Chair