

ADVISORY ETHICS OPINION 95-18

SYNOPSIS:

The Professional Responsibility Committee will not evaluate or comment on the conduct of a non-requesting attorney.

FACTS:

Attorney A is aware of certain facts which could lead to the conclusion that another attorney's direct contact with Attorney A's client occurred after the attorney has been advised that the client was represented by Attorney A.

ANALYSIS:

Attorney A requests a ruling from this Committee as to whether on the facts available to him he should conclude that a violation of DR 7-104 has occurred. DR 7-104(A)(1) provides that an attorney shall not communicate on the subject of the representation with a party he knows to be represented by counsel unless he has obtained the consent of the party's attorney. Attorney A. correctly points out that if the other attorney received notification of Attorney A's representation prior to the communication, his direct contact with Attorney A's client would be a violation of DR 7-104 and Attorney A would be required to report that violation pursuant to DR 1-102 and DR 1-103.

DR 1-102(A) provides that an attorney shall not violate a Disciplinary Rule. DR 1-103(A) provides that any attorney who has unprivileged knowledge of a violation of DR 1-102 must report that knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

Attorney A has asked us to decide whether the information available to him constitutes "unprivileged knowledge" of a violation. We are not prepared to do so because in doing so, we would be required to evaluate the conduct of an attorney other than the Attorney making the request for the opinion.

The role of the Professional Responsibility Committee is clearly defined in the Rules of the Committee on Professional Responsibility. Pursuant to those Rules, we offer advice to members of the Vermont Bar upon the ethical propriety of their contemplated professional conduct. The Committee does not express opinions as to the conduct of attorneys who have not requested the Committee's opinion.

While we understand one attorney's reluctance to report another, an attorney cannot delegate his or her duty to evaluate the available facts and make a judgment as to whether they rise to the level of "unprivileged knowledge" of another attorney's violation. Attorney A must review the facts and decide for himself whether he has unprivileged knowledge of a Disciplinary Rule violation. If, from the facts known to him from unprivileged sources, he reasonably concludes that another attorney has violated the Code, then he has a duty to report the second attorney's violation.¹

In Opinion 87-8, in discussing the reporting mandate of DR 1-103(a), we stated that the Disciplinary Rule imposes an obligation to report knowledge of a violation of DR 1-102 "under such circumstances as give rise to a good faith or substantial belief on the part of the attorney possessing the knowledge that a violation has occurred." We believe this continues to be the reporting standard under our Code.

¹ See prior opinions of this Committee, Nos. 87-8, 90-9, and 92-10.