

Ethics Opinion

870326

QUESTION PRESENTED: Does a lawyer who finds out information concerning guilt (i.e. perjury) of his client have a duty to disclose the information to the court?

ANSWER: Yes.

ANALYSIS: Rule 3.3, Candor Toward the Tribunal, provides in pertinent part:

(a) 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;

(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;

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

This rule trumps the Rule 1.6 Confidentiality provisions. There is an affirmative obligation for the attorney to inform the court of known perjury.

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