
E-82-12 Attorney's obligation to inform client of potential malpractice claim

Question

Does an attorney have an ethical obligation to inform his or her client that an omission has occurred which may constitute malpractice and that the client may have a claim against him or her for such an omission?

Opinion

An attorney is required to represent a client competently and zealously within the bounds of the law. SCR 20.31 and 20.34. An attorney may not intentionally prejudice or damage the client during the course of the professional relationship, knowingly engage in conduct that is illegal or contrary to a disciplinary rule, or handle a matter that he or she is not competent to handle. SCR 20.35(1)(c), 20.36(1)(h), and 20.32(1).

An attorney is also required to assist in maintaining the integrity and competence of the legal profession. SCR 20.02 and 20.48(2). He or she is required to report unprivileged knowledge or violations of the disciplinary rules or misconduct. SCR 20.02(4), 20.04, and 20.05. Furthermore, an attorney may not attempt to exonerate himself or herself from or limit his or her liability to a client for malpractice. SCR 20.33 and 20.31(6).

In *Laehn Coal & Wood Co. v. Koehler*, 267 Wis. 297, 64 N.W.2d 823 (1954), the Wisconsin Supreme Court held that attorney is under a duty to make full disclosure of all information material to the transaction for which the attorney is retained. Consistent with this holding is Section 125 of *Legal Malpractice* which states in part: "Corollary to the attorney's fiduciary obligations is the responsibility to promptly advise the client of any important information. This means that there must be complete disclosure of all information which may bear upon the quality of the attorney's representation."

In light of the foregoing, it is the opinion of this committee that an attorney is obligated to inform his or her client that an omission has occurred which may

constitute malpractice and that the client may have a claim against him or her for such an omission.