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Committee on Professional Ethics



Opinion #545 - 8/24/82 (22-82)

Topic: Employment, withdrawal from, due to client's unlawful conduct.

Digest: Lawyer may not assist client in illegal conduct, and must withdraw from the representation if the client persists in such conduct.

Code: EC 1-5;
DR 1-102, 2-110(B)(2),
7-102(A)(7).

QUESTION

A lawyer represents the purchaser of a newly constructed home who is under pressure from the seller-builder to execute a Board of Equalization and Assessment Real Property Transfer Report which would understate the cash purchase price by a material amount. The price the seller-builder wishes to have shown is the so-called "base price," which excludes the cost of a number of so-called "extras" such as a fireplace, a veranda, central air conditioning and an enclosed porch. The client tells the lawyer that he will do as the seller-builder requests. May the lawyer continue to represent the client in connection with the transaction?

OPINION

It is neither the function nor the practice of this Committee to render opinions on questions of law. Nevertheless, before commenting on the ethical aspects of the question posed, we note N.Y. Real Prop. Law § 333-1(e) (McKinney Supp. 1981-1982), which provides in relevant part as follows:

"A recording officer shall not record or accept for record any conveyance of real property affecting land in New York state unless accompanied by a transfer report form prescribed by the state board of equalization and assessment which shall contain such information as required by such board including . . . a statement of the full sales price relating thereto. . . . For purposes of this subdivision, the term 'full sales price' means the price actually paid or required to be paid for the real property or interest therein . . . but excluding the fair market value of any personal property received by the buyer. . . ."

See also N.Y. Penal Law § 175.30 (McKinney 1975), which makes it a class A misdemeanor to offer to a public servant for filing an

instrument known to the offeror to contain false information, and N.Y. Penal Law § 175.35 (McKinney 1975), which makes it a class E felony to offer to a public servant for filing, with intent to defraud the state, an instrument known to the offeror to contain false information.

A lawyer may not advise a client to engage in conduct the lawyer knows to be illegal or fraudulent. If, in the lawyer's professional opinion, it appears that the client's proposed conduct is illegal, the lawyer should explain the serious potential consequences of engaging in improper conduct, urge him not to engage in it, and withdraw from the retainer if the client rejects the lawyer's advice. For purposes of this opinion we assume that the lawyer reaches the conclusion that the client's proposed conduct is illegal.

DR 7-102(A)(7) provides that a lawyer shall not counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent. In N.Y. State 126 (1970), we held that a lawyer could not prepare usurious mortgage papers for a client. In N.Y. State 455 (1976), we held that although a lawyer could counsel a client as to the legal character and consequences of his act, the lawyer could not encourage his client to commit illegal acts or undertake to bring about a violation of law. In N.Y. City 214 (1932), the Committee on Professional Ethics of the Association of the Bar of the City of New York considered the appropriate course of conduct of a lawyer whose client proposed to defraud an individual who shared with the client an interest in an insurance policy. The Committee held that if the client failed to desist from fraudulent conduct, the lawyer should "inform [the client] that he has withdrawn completely from the matter." Further, in N.Y. County 181 (1919), the Committee on Professional Ethics of the New York County Lawyers' Association held that a lawyer whose client acted in bad faith in obtaining a stipulation for entry of judgment should "withdraw from the cause, because he may otherwise be assisting in the perpetration of a fraud."

Clearly a lawyer should attempt to dissuade his client from signing and presenting for filing a deed recording form that understates the sales price of the property. If the client rejects the lawyer's counsel, the Code and ethics opinions construing the Code offer the lawyer no choice but to withdraw from the representation. DR 2-110(B)(2). Under no circumstances may a lawyer assist a client in violating the very laws that the lawyer is duty bound to uphold. EC 1-5; DR 1-102.

For the reasons stated, the question posed is answered in the negative.
