

NEW YORK STATE BAR ASSOCIATION
Committee on Professional Ethics

Opinion 713 – 2/5/99 (56-98)

Topic: Circumstances justifying non-compliance with client's instructions.

Digest: Lawyer should comply with client's direction to forego title searches.

Code: DR 2-110(C)(1)(e), 7-101(B), 7-102(A)(7); EC 7-1, 7-8.

QUESTION

A lawyer has drafted a deed for a client who, contrary to the lawyer's advice, has instructed the lawyer to forego title searches of certain parcels of real property to be taken by the client in satisfaction of a preexisting debt. Should the lawyer comply with the client's instruction, notwithstanding the lawyer's professional judgment that it would be contrary to the client's interest to do so?

OPINION

A client's instruction to forego any title searches of the real property to be transferred in satisfaction of a preexisting debt owed to the client should be followed by the lawyer. The client may limit the scope of the lawyer's representation to drafting a deed as long as the lawyer is able to otherwise competently represent the client and the client fully understands the consequences of the limitation. N.Y. State 604 (1989). The lawyer's duty is to "exert his best effort to insure that decisions of the client are made after the client has been informed of relevant considerations." EC 7-8. The lawyer may continue to represent a client "even though the client has elected to pursue a course of conduct contrary to the advice of the lawyer so long as he does not thereby knowingly assist the client to engage in illegal conduct or to take a frivolous legal position." EC 7-5.

Here, there is no indication that the client's request involves any violation of law such as might justify the lawyer in disregarding the instruction to forego title searches. DR 7-101(B)(2); DR 7-102(A)(7). If for any reason, the lawyer believes that his client's interests would be best served by having the title searches, then it would be the lawyer's duty to advise the client to that effect. However, once the client is fully informed (taking into consideration the client's level of sophistication) as to the legal consequences of foregoing title searches, the decision whether to forego title searches

is ultimately for the client and not the lawyer. EC 7-8; N.Y. State 155 (1970); *cf.* DR 7-101(B)(1).

Accordingly, the lawyer is bound to follow the client's instruction to forego title searches unless the lawyer withdraws from the representation as permitted by DR 2-110(C)(1)(e). This provision permits (but does not require) a lawyer to withdraw from representing a client when the client insists in a matter not pending before a tribunal that the lawyer engage in conduct which is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules. See Roy Simon, *New York Code of Professional Responsibility Annotated* 141 (1998 ed.). In any event, the lawyer would be well advised to memorialize in writing the client's instructions and the lawyer's advice concerning the potential consequences of foregoing title searches.

CONCLUSION

For the foregoing reasons the question is answered in the affirmative.
