

ETHICS OPINION

RO-92-09

QUESTION:

"On or about May 16, 1991, I was appointed by Judge R [REDACTED] (a visiting Judge from G [REDACTED] County, Alabama) to represent the interest of one, C [REDACTED] J [REDACTED], in connection with a harassment charge in Juvenile Court wherein the daughter of the secretary of a part-time District Attorney had been physically and verbally harassed at school.

\* \* \*

As is our custom, when this matter was concluded, I showed Judge N [REDACTED] W [REDACTED] as the appointing judge, submitted by billing for \$406.00 to Judge W [REDACTED] and awaited payment of my billing by the State. For whatever reason (and I do have some opinions as to such reason), Judge W [REDACTED] held this billing in his office from August of 1991 until May of 1992 before he struck the amount that I had billed (\$406.00) to the State Comptroller and thereby altered my billing to that for \$200.00 (total).

I was enraged when I learned of this and immediately contacted the functioning chairman of our Peer (fee bill) Review Committee to seek his advice. His advice was that I not create an issue of this sort one week before the June 2, 1992 election, that I withdraw my billing and all evidence of it from the office of the Juvenile Court Clerk, and resubmit a proper billing to the Peer Review Committee who would then forward my (presumably approved) bill to Judge O [REDACTED] for his execution and submittal to the State for payment.

Acting upon this advice, I have requested and received the original of my billing from the Clerk of the Court.

In addition to the rightness or wrongness of Judge W [REDACTED]'s actions, I want to know the following:

1. If I can properly remove this now altered billing from the hands of the Juvenile Court or if it is a 'court record' which I am duty-bound to return to the Clerk for appropriate processing; etc. and,
2. I also want to know if I have a positive duty to report this bizarre behavior to the Judicial Inquiry Commission for investigation of Judge W [REDACTED]'s actions."

\* \* \*

ANSWER QUESTION ONE:

The Disciplinary Commission cannot declare your appointed fee application, once filed, as an official court record or not. Such a determination is up to the court itself or the Alabama statutes, if any.

ANSWER QUESTION TWO:

Rule 8.4(b) of the Rules of Professional Conduct does not require you to affirmatively report evidence of judicial misconduct except "upon proper request."

DISCUSSION:

Your first question asks the Disciplinary Commission to respond to something that has no connection with the Rules of Professional Conduct. Internal procedures and rules of the state court system and/or Alabama statutes would be controlling in determining your course of action.

With respect to what ethical duty you have to report this judge's conduct, Rule 8.3(b) states as follows:

"Rule 8.3 Reporting Professional Misconduct

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- (b) A lawyer possessing unprivileged knowledge or evidence concerning another lawyer or judge shall reveal fully such knowledge or evidence upon proper request."

This deals with reporting of misconduct as identified in Rule 8.4. What you have described may or may not be misconduct. You have only characterized it as "bizarre behavior." The duty is a limited one because it only requires that you reveal evidence upon proper request, presumably by an authority empowered to investigate the type of conduct involved. ABA Model Rule 8.3(b) [not adopted by Alabama] provides that a lawyer must report a judicial violation of applicable rules, only when it raises "a substantial question as to the judge's fitness for office." To that extent, even the Model Rule is limited in its requirement of affirmative reporting of judicial conduct.

Therefore, in your situation, it is not ethically required that you make a report to the Judicial Inquiry Commission. You may do so if you choose.

MLM/vf

6/8/92