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151 *N.J.L.J.* 994
March 9, 1998

7 *N.J.L.* 544
March 9, 1998

ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

Appointed by the New Jersey Supreme Court

OPINION 684

Advising Client of Potential
Legal Malpractice Claim

The inquirer asks whether, in light of *Olds v. Donnelly*, 150 *N.J.* 424 (1997), an attorney is still required to inform a client of a potential malpractice claim against that attorney, and if the answer is in the affirmative, at what point the attorney is so obligated.

Olds v. Donnelly makes it clear that "The Rules of Professional Conduct still require an attorney to notify the client that he or she may have a legal malpractice claim even if notification is against the attorney's own interest." *Id*. at 442- 443. The Supreme Court found support for this holding in RPC 1.7(b)(2) which provides that "a lawyer shall not represent a client if the representation of that client may be materially limited by ... the lawyer's own interests, unless the client consents after a full disclosure of the circumstances and consultation with the client ... ."

RPC 1.7(b)(2) is not the only Rule of Professional Conduct requiring notification. RPC 1.4 mandates it as well by requiring that a lawyer keep a client reasonably informed about the status of a matter and "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." A client cannot make an informed decision about representation if that client is unaware that the lawyer may have committed malpractice. While we can foresee instances in which a client may well chose not to pursue a malpractice claim, a lawyer cannot decide this issue for a client through nondisclosure. Disclosure is mandated.

Clearly, RPC 1.4 requires prompt disclosure in the interest of allowing the client to make informed decisions. Disclosure should therefore occur when the attorney ascertains malpractice may have occurred, even though no damage may yet have resulted.

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