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To: Attorney Ethics Advisory Committee <aea@courts.az.gov>

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Hi,

I liked the opinion, but I find that attorneys may not comply with the mandate:

Comment [21] If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in ER 1.16(a)(1).

I have run into this situation with my HOA and their attorney. I went to a board meeting and because I spoke up about an issue, I have since been subject to all kinds of invalid notices. One of them (a leaking roof repaid between rain storms) resulted in a fine against my account that was never sent as a notice, was in direct violation of the HOA CCRs and state law. At that point I decided to run for the board, where I previously sat on for 6 years. The board decided to stop my election action. Around the cutoff date for candidates, the fraudulent fine was then followed by a different notice to paint the whole house (which was painted less than 3 years prior) and 3 days later, my membership in the HOA was suspended. Since I was running in an election for a board position, the HOA refused to allow such (for myself and another community member) and therefore the 2 incumbent board members automatically won their positions again. So now there was a second fraud. The attorney for the board was notified by my counsel to remove the fraudulent fine, reinstate my membership and that the election was also fraudulent. The opposing counsel's response was to send a letter to mine with 3 material negligent of fraudulent misrepresentations and to demand a waiver and release, with a nondisclosure agreement by both parties. I did not sign it and therefore, to this day, my membership is suspended. The HOA wouldn't even accept payment of the fine made by a 3rd party (without my request) because unless I sign the nondisclosure etc, they will not reinstate my membership,bership.

How does this impact the ethics opinion above? Unless there is a possible consequence (monetary and practice) against attorneys for failure to comply with the ethics opinions, many attorneys will choose the paying client even if they are doing or assisting acts that amount to conspiracy to commit fraud. I would suggest that the bar use a hefty fine schedule for certain violations to have them consider if their risk in ignoring their ethical violations is worth it. The attorney that advises our HOA has caused a financial and contractual harm to myself as a direct result of his poor and unethical advice to his clients that have exhibited fraudulent behaviors. However, I am not his client, just the victim of his client and an ethics complaint against him may not be heard. With HOA matters, many of the attorneys tell the HOAs they are free to do what they want, despite case law and statutes to the contrary. For HOA members, it is costly to mandate that the HOA boards follow the CCRs etc and the laws do not mention fines for HOA boards that violate state law or even their own CCRs. Therefore, embedded fines for ethic opinions such as the one issued may be one of the few ways that can provide protection for consumers against poor attorneys.

Sincerely,
Abbie Watchman
Attorney at Law (Retired)