

ETHICS OPINION 2012-04

**Rules:** 3.3  
**Subject:** Efforts necessary to correct misrepresentation by client  
**Summary:** Attorney has an obligation to take reasonable efforts to remediate application for court appointed counsel known to be false

Attorney has been appointed to represent an indigent criminal defendant. During the course of the representation, Client has vaguely suggested to Attorney that he has “secret” assets. Attorney has not verified these statements and does not believe that they can be.

Attorney now asks what, if any, obligations exist to take remedial action regarding Client’s statements.

**OPINION**

As a practical matter under the circumstances, the Committee believes Attorney should review the case file to see if Client completed an affidavit of indigent status or other document setting forth available income and assets. If so, Attorney should remind Client of any possible penalties for making a false statement and encourage the client to take appropriate steps to correct the issue. See Rule 3.3., Comment 10.

Pursuant to Rule 3.3(b), Attorney must take remedial action, including disclosure of otherwise privileged communications to the court or withdrawal, in order to address fraudulent conduct by Client. This obligation only exists when Attorney “knows” such conduct to be fraudulent. Under the circumstances, Attorney does not “know” there to be a misrepresentation and therefore has no affirmative duty to take remedial action. The Committee believes it appropriate to take the practical steps set forth above, however.

Neil Fulton, Chair  
Ethics Committee  
State Bar of South Dakota