

Committee Opinion  
April 10, 1984

LEGAL ETHICS OPINION 561

PLEADINGS/INADVERTENT ERROR.

Following a favorable court ruling, an attorney prepared a decree reflecting the ruling, which inadvertently provided for the release of the entire claim instead of the more narrow aspect of the claim on which the court had ruled. The effect of the ruling, now final, would apparently be to preclude the raising of the issue not actually ruled on by the court.

Given that no intentional misrepresentation or misstatement was made to the court, it is not improper for the attorney to now assert the affirmative defense of res judicata. The attorney must concede the factual circumstances, however, if and when the adversary raises the issue of the inadvertent nature, of the preclusion ruling.

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**Legal Ethics Committee Notes.** – Rule 4.1(b) might require disclosure of the mistake if the disclosure is necessary “to avoid assisting a criminal or fraudulent act by a client.”