

You advise that you represent an individual who has been charged with sexually abusing and raping his 20-year-old stepdaughter. The stepdaughter alleges that this abuse has been ongoing for seven to eight years. After the stepdaughter made her allegations, she moved out of the home which she was sharing with your client. When she moved out, the alleged victim left various letters, papers, books and pictures in the home. You directed your client to bring those letters, papers, books and pictures to your office so that you could review them to see if there was anything that would be helpful to your client's defense. You did not direct him to bring any specific items, just what was left in the home by his stepdaughter. You were interested in any letters or diaries which might conflict with what the victim had told investigators. At the preliminary hearing, the alleged victim testified that during one particular month, she had sex with her stepfather on six occasions. She further stated that she had marked each occasion by writing a number on a "Garfield the Cat" calendar. The search was conducted to search your client's home for the calendar. The search was conducted and no calendar was found. After the preliminary hearing, you looked through the box of items that your client had brought and found a calendar which meets the description of the one about which the alleged victim testified. The calendar had the numbers 1, 2, 3, 4, 5 and 6 written in the blocks corresponding to various dates. The numbers are written approximately four to six days apart. The alleged victim did not testify about which particular date she had sex with her stepfather, only that it had been six times in that month.

You wish to know whether or not you have an obligation to turn over the calendar to the prosecutor. You state that the calendar is not the instrument or fruit of the crime, nor is it contraband. You further state, however, that you feel that this calendar is particularly crucial in this case since there is no physical evidence or witnesses, except the alleged victim, against your client.

Disciplinary Rule 7-102(A)(3) states that in his representation of a client, a lawyer shall not conceal or knowingly fail to disclose that which he is required by law to reveal. Disciplinary Rule 7-108(A) states that a lawyer shall not suppress any evidence that he or his client has a legal obligation to reveal or produce. Disciplinary Rule 7-102(A)(7) provides that a lawyer shall not assist his client in conduct that the lawyer knows to be illegal.

If there is a legal duty for you to produce the calendar, then the Committee opines that it would be a violation of DR:7-102(A)(3) and DR: 7-108(A) to fail to produce it. If the effects are sought by the daughter, a violation of DR:7-102(A)(7) could exist if you fail to return it to her. Whether or not you have a legal duty to produce the calendar is beyond the Committee's province.

The Committee is not advised that the Virginia Code of Professional Responsibility is applicable in a military tribunal, or in a foreign venue.

Committee Opinion
March 2, 1988