

DISCLOSURE – MISCONDUCT –  
REPRESENTING A CLIENT WITHIN  
THE BOUNDS OF THE LAW:  
ATTORNEY ADVISING CLIENT TO  
EXECUTE AGREEMENT CONCEALING  
ILLEGAL INFORMATION ABOUT  
ANOTHER.

You have provided the Committee with a document related to a divorce case wherein the attorney for the husband has apparently advised his client to execute an agreement not to initiate criminal prosecution or provide information which could result in criminal prosecution of the wife's lover. The agreement also provides for the lover's reasonable visitation with a child who was born to the wife during the marriage but whom the wife states was fathered by the lover. The lawyer also signed the agreement as attorney for the husband. An affidavit, executed by the lover on the same day as the agreement, indicates that the wife and the lover were users of heroin, cocaine, marijuana, and alcohol. You advise that the documents were discovered during the course of a police narcotics investigation.

You further advise that the crime of misprision of a felony, which is retained in Virginia as an uncodified common law crime, makes criminal the failure to report a felony. You indicate that a more recent codification of the federal statute requires an additional element of a positive act of concealment of the crime. Under Virginia Code § 18.2-461, the compounding or concealing of offenses is a crime if the agreement to conceal the offense is granted in exchange for a pecuniary benefit or reward or an engagement therefore.

The appropriate and controlling rules applicable to the situation are DR:7-102(A)(7) and (8), which prohibit a lawyer from counseling or assisting his client in conduct that with fee charges of lawyers and for this reason he should explain is illegal or contrary to Disciplinary Rule.

The Committee is of the opinion that if the lawyer's conduct constitutes misprision of a felon, then the activity of the attorney would apparently be in violation of the Disciplinary Rules cited above. The resolution of disputes of fact are not within the purview of the Standing Committee on Legal Ethics.

Committee Opinion  
June 5, 1989