

You have advised that a lawyer represented to a governing body that he has been employed by an individual to file a zoning violation but will not disclose the identity of his client to the party against whom the complaint has been filed. You ask the Committee to consider the propriety of a lawyer filing a zoning violation complaint on behalf of a client with the county government and withholding that client's identity.

The appropriate and controlling disciplinary rules relative to your inquiry are DR:4-101(A) and DR:4-101(B)(1), (2) and (3). Disciplinary Rule 4-101(A) provides that a "confidence" is information protected by the attorney-client privilege under applicable law and a "secret" is other information gained in the professional relationship that the client has requested be held inviolate as the disclosure of the same would be embarrassing or would likely be detrimental to the client. Furthermore, under DR:4-101(B)(1), (2) and (3), a lawyer shall not knowingly reveal a confidence or secret of his client or use the same to the disadvantage of the client without having first obtained the client's informed consent, except when the information refers to the client's expressed intention to commit a crime or the client acknowledges to the attorney that he has perpetrated a fraud upon a tribunal.

The Committee is of the view that even a client's identity may be construed to be a confidence or secret, even when such information is a matter of public record, where the client has specifically requested that such information be kept secret or held inviolate (see *In re Kozlov*, 79 NJ 232, 398 A.2d 882 (1979)). Ethical Consideration 4-4 [EC:4-4] provides in part that the ethical obligation of a lawyer to guard the confidences and secrets of his client extends beyond the evidentiary privilege without regard to the nature or source of information or the fact that others share the knowledge. The Committee opined in LE Op. 1147 that:

Once information has become a matter of public record, it is no longer confidential *unless* the attorney should have known or it is obvious that such information may be construed to constitute a "secret" under DR:4-101 and should remain confidential. (emphasis added)

Thus, the Committee would opine that a lawyer's ethical obligation may properly preclude him from refusing to disclose a client's identity when in the lawyer's judgment or when it is obvious that disclosure of the same would cause embarrassment or would be detrimental to the client or, in particular, when the client has specifically requested that such information be kept secret. The Committee is aware that a client's identity and information relating to the identity of the client, such as address, phone number, or location, are generally not protected by the attorney-client privilege unless the lawyer is required to protect the confidentiality of such information under DR:4-101. The Committee is unaware, however, of any proscriptions in the Code of Professional Responsibility against the willful refusal to disclose a client's identity, except when the employment by another client would deem such disclosure proper and necessary prior to acceptance of proffered employment or in order to continue the attorney-client relationship. (See DR:5-101(A), DR:5-105 and LE Op. 1147)

Committee Opinion
October 19, 1989