

You have indicated that you represented a defendant about ten years ago in a very unusual criminal case. The defendant was acquitted and you are now nearing completion in the writing of a book which closely follows the facts and events of the case, although none of the principals involved are in any way identified and fictitious names and places are used. Furthermore, you indicate that, in addition to those parts of the story which come from information provided by your client during representation, you have also added parts of pure fiction.

You have requested that the Committee opine as to the propriety of your authoring such a part-fact/part-fiction work if all characters and places are fictional, no identification is made of the case, client or any other party connected with the case, and the book has the usual disclaimer as to "actual persons."

The appropriate and controlling disciplinary rules relevant to the issue you have raised are DR:4-101(B), which mandates that a lawyer shall not knowingly reveal a confidence or secret of his client, nor shall the lawyer use a confidence or secret of his client to the disadvantage of the client or for the lawyer's own or a third person's advantage; and DR:4-101(C)(1), which permits a lawyer to reveal a client's secrets or confidences with the consent of the client after full disclosure. As indicated in DR:4-101(A), a "confidence" refers to information protected by the attorney-client privilege under applicable law, while a "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client. Therefore, the question of whether the information you wish to include in your book is a "confidence" requires a legal determination beyond the purview of the Committee's authority. Since the definition of a "secret" includes a much broader scope of material, for purposes of this opinion the Committee construes the information you wish to include as a secret. Further guidance as to the application of the pertinent rules is found in Ethical Considerations 4-5 [ EC:4-5] and 4-6 [ EC:4-6].

The Committee has earlier opined that a lawyer may prepare and publish a [non-fiction] law journal article based upon the facts of a case in which he has represented a defendant both civilly and criminally, assuming the lawyer has received the client's fully informed consent. (See LE Op. 1336) In addition, the Committee directs your attention to ABA Informal Opinion 920 (February 24, 1966), which found no impropriety in a lawyer writing works of fiction under his own name.

Under the facts of the question you have posed, the Committee is of the opinion that the informed consent of your former client would be required despite your indication that the book would be based only partly on the facts, trial and information gained from your former client. With such consent, the Committee sees no impropriety in your authoring and publishing the part-fact/part-fiction work you have described.

Committee Opinion  
September 13, 1990