

CONFIDENCES AND SECRETS:
LAWYER AS A WITNESS TO
DEFEND HIMSELF AGAINST FORMER
CLIENT'S ACCUSATION OF CRIMINAL
CONDUCT.

A defendant in a murder-for-hire case has made statements to an FBI agent that his former attorney was responsible for the killing. The former attorney is willing to testify for the Commonwealth if such testimony is not prohibited by the Virginia Code of Professional Responsibility.

The Committee has previously opined that it would be improper for an attorney to disclose confidential information gained from a client, even though that information would exonerate another individual and even though the attorney no longer represents the client.

The Committee opined that the former attorney may disclose to the Commonwealth's attorney or the court hearing the matter confidences gained during the course of the attorney-client relationship, since the defendant has made statements to the FBI agents which would tend to incriminate the former attorney. Disclosure should be made only to the extent necessary to rebut any accusation by the former client of the attorney's wrongful conduct or involvement in the alleged murder-for-hire. The Committee believes the confidences may be revealed by the former attorney with or without an indictment from the court or tribunal, but suggested, however, that the former attorney may wish to consider seeking a judicial ruling in limine as to the propriety of disclosure under the circumstances. [DR:4-101(C)(4); LE Op. 334, LE Op. 364, LE Op. 439, LE Op. 488, LE Op. 645, LE Op. 787, LE Op. 967; New York City Bar Legal Ethics Opinion 1986-7 (12/19/86), ABA/BNA Law. Man. on Prof. Conduct, 901:6403.]

Committee Opinion
October 21, 1991