

You have presented a hypothetical situation in which a former employee of a major company visits an attorney's office, and advises counsel that he wishes assistance in making public certain information he has about irregular, and possibly illegal, actions of his former employer which may have an effect on public health. You also state that the client is completely innocent of complicity of any sort in the company's decisions or actions in this matter, having gained knowledge of the circumstances inadvertently.

Several days later, the client's wife prevails on the client not to risk his new employment situation by making public his knowledge of these events. (You state that the former employer may have some leverage with the new employer.) The client then directs counsel not to go forward in making the information public.

Counsel is now deeply concerned about his obligation to society, as opposed to his obligation to the client, and wishes to release the information out of concern for the health and safety of the public. Counsel is concerned, however, that such release of the information without the client's permission could be viewed as a breach of confidentiality and could conceivably result in client losing his present employment.

You have asked the committee to opine whether, under the facts of the inquiry, counsel may make public the information he was provided by the client, in the absence of the client's permission.

The appropriate and controlling Disciplinary Rule related to your inquiry is DR:4-101, which provides for the preservation of client confidences and secrets.

The information possessed by counsel is confidential, received within the attorney-client relationship. Canon 4 provides, with few exceptions, for the preservation of such client confidences and secrets.

The facts indicate that the client is innocent of any complicity in the company's decisions or actions in the matter. The facts do not indicate that the client has perpetrated a fraud upon a tribunal, or that he intends to commit a crime, related to this matter. Therefore, the exceptions to maintaining confidentiality, under DR:4-101(D) do not apply.

Thus, the committee opines that counsel may not reveal the information provided by the client, regardless of counsel's motivation, absent the client's permission.

Committee Opinion
September 16, 1994