

Committee Opinion  
May 22, 1985

LEGAL ETHICS OPINION 688

CONFLICT OF INTEREST – FORMER  
CLIENT – SUBSEQUENT CLIENT –  
CRIMINAL LAW.

When an attorney has represented defendant A in a criminal matter in which there has been final disposition and defendant A has evidence which could be considered exculpatory in nature in the Commonwealth's case against defendant B, the defense attorney may not undertake the representation of defendant B unless both defendants A and B consent after full disclosure to both defendants. Furthermore, the disclosure to defendant B must include the existence of a condition imposed by defendant A on the defense attorney's representation of defendant B that defendant A will not allow the defense attorney to subpoena defendant A as a witness at the trial of defendant B to testify regarding the possible exculpatory evidence. [ DR:5-105(D) and DR:5-106(B) of the Virginia Code of Professional Responsibility] In addition, DR:7-101(A) and (B) give specific guidance as to the attorney's duty to defendant B.

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