

You advise that you represented X in a divorce matter. During the evening hours of a later date, you received telephone messages from X, by way of a friend and by way of a telephone answering device, to the effect that I have blown her away." Upon receiving those messages, you made immediate attempts to contact X to determine the circumstances and background regarding this message. Since you were unable to do so, and out of great concern that someone may have been injured, you attempted to verify whether the incident had occurred. You sought verification from the police department and enclosed with your inquiry a transcript of that telephone call, which unbeknownst to you was being recorded. Being unable to gain any verification from the police department or from X, you set out for X's residence to determine if you might be of assistance. Upon arriving, it was your determination that X needed to be committed immediately for psychiatric evaluation and you took X directly to the hospital. However, during the course of your involvement with X in obtaining his hospitalization, X, unbeknownst to you, deposited a weapon in your vehicle. At a later time during the evening, after he had been hospitalized, X advised you that the weapon was in your car. You immediately retained the service of an attorney to counsel you as to what steps you should take with regard to the weapon. You ultimately had an unnamed individual deposit this weapon with the Commonwealth's attorney.

You advise the Committee that you believed you were X's counsel throughout this entire incident. You have subsequently been advised by the Commonwealth's attorney that you will be called as a witness in this case regarding your telephone conversation with the police department. You have withdrawn from the case, but you are still retained by X to consult with him regarding this matter.

You wish to know whether or not it would be proper for you to testify as to any aspect of your representation of X, including the telephone calls to the police department.

DR:4-101(B)(1) states that an attorney shall not reveal the confidences or secrets of his client. DR:4-101(B)(2) and (3) state respectively that an attorney shall not use the confidence or secret of its client to the disadvantage of the client, and an attorney shall not use the confidences or secrets of his clients for the advantage of himself or a third person unless the client consents after disclosure.

DR:4-101(D)(1) states that a lawyer shall reveal the intention of his client, as stated by the client, to commit a crime and the information necessary to prevent the crime, but before revealing such information, the attorney shall, where feasible, advise his client of the possible legal consequences of his action, urge the client not to commit the crime, and advise the client that the attorney must reveal the client's criminal intention unless thereupon abandoned, and, if the crime involves perjury by the client, that the attorney shall seek to withdraw its counsel.

Committee Opinion
June 17, 1988

The Committee opines that it would be improper for you to reveal any knowledge you gained about your client's crime. Since the message you received from your client indicated that the crime had already occurred, it would not be considered a future crime. Therefore, DR:4-101(B)(1), (2) and (3) and not DR:4-101(D) apply in this situation.

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