

Committee Opinion  
February 22, 1989

LEGAL ETHICS OPINION 1202

CONFIDENTIALITY AND SECRETS –  
CRIMINAL REPRESENTATION –  
DISCLOSURE: NO ETHICAL  
OBLIGATION TO REVEAL EVIDENCE  
WHICH IS NOT A FRUIT OF A CRIME.

You have advised that your client has been charged with possession of a controlled substance with the intent to distribute. Your client's spouse, whom you do not represent, has also been charged. Prior to their arrests, a search warrant was issued for their home, a search conducted, and among the items found were the alleged controlled substance and sizeable amount of cash money. Both your client and spouse have been released on bond and seizure proceedings instituted; however, a trial has not been scheduled at this time.

After release, your client was allowed to return to the marital home to collect certain items of personal property. While gathering a particular item, your client discovered some cash money in a box which your client removed and presently possesses. Your client revealed this information to you and indicated that the amount of money involved appears to be a very small amount. At your suggestion, your client has not counted nor disturbed the money in any way.

You advise further that your client has no knowledge as to whether the money in question is legitimate or perhaps the fruit of criminal enterprise, and your client has indicated no prior knowledge of the presence of the money until it was discovered by the client. However, client's spouse has advised that the money was partially the proceeds of a tax refund and some rental money which was being kept for the spouse's sister.

You wish to know whether under the facts you have presented it is your duty to both client and the legal profession to reveal any new information or evidence gained during the course of the representation of your client, which evidence cannot be identified by your client as fruits of the crime. You have reviewed LE Op. 386, LE Op. 404, LE Op. 551 and LE Op. 709 and conclude that you would not be obligated to reveal the existence of the cash money.

The appropriate and controlling rules relative to your inquiry are Disciplinary Rules 4-101(B), 7-102(A)(3) and 7-108(A). The rules provide that a lawyer shall not reveal a confidence or secret of his client; use the same to the client's detriment; or use the same for the lawyer's or a third person's advantage, except as provided in DR:4-101(C) and (D). (See DR:4-101(B)) A lawyer shall not conceal or knowingly fail to disclose that which he is required by law to reveal. (See DR:7-102(A)(3)) A lawyer shall not suppress any evidence that he or his client has a legal obligation to reveal or produce. (See: DR:7-108(A) and LE Op. 953)

Whether the cash money that was found by your client is a fruit of criminal enterprise is a legal question, and is thereby not within the purview of this Committee. Since your inquiry indicates that you are convinced that this recently discovered money is not a fruit of a crime, then you would be under no ethical obligation to reveal it.

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