

Committee Opinion
May 2, 1989

LEGAL ETHICS OPINION 1207

ATTORNEY/CLIENT RELATIONSHIP-
CONFIDENTIALITY AND SECRETS-
DECEASED CLIENT: REVEALING
CLIENT'S SECRETS AND USING THEM
TO DETRIMENT OF CLIENT.

Since the matter you referred to in your inquiry is simultaneously being considered within the disciplinary process, the Committee provides this opinion based upon the specific facts provided in your inquiry. You should be further advised that the Committee is not constituted to resolve disputes.

FACTS: An attorney has represented a corporation owned by a sole shareholder and sole shareholder has also consulted the attorney on a domestic relations matter. Following the death of the sole shareholder, his widow and sole heir to the stock is the defendant in a nonrelated suit.

ISSUE: May the attorney represent the plaintiff in the nonrelated suit?

The appropriate and controlling disciplinary rule relative to your inquiry is DR:4-101(B), which provides that a lawyer shall not knowingly reveal a confidence or secret of this client or use the same to the disadvantage of the client or for his own advantage or the advantage of a third person, unless the client consents after full disclosure.

Whether or not any discussions between the lawyer and the widow, either before or after her husband's death, or the continued representation of the corporation after the husband's death, created an attorney-client relationship with the widow, is a factual determination which is beyond the purview of the Committee. If an attorney-client relationship did exist, then the attorney could not reveal or use any secrets or confidences gained from the widow, including her knowledge or lack of knowledge of her husband's financial affairs. Thus, if the relationship is found to have existed and if the attorney gained secrets or confidences of the widow, he may be in danger of violating DR:4-101(B) if he represents the plaintiff. (See LE Op. 441, LE Op. 672, LE Op. 792)

Although the Virginia Code of Professional Responsibility as presently drafted is not explicit on this point, the Committee opines that the attorney's responsibility to protect a client's secrets and confidences survives the death of the client. Therefore, a lawyer may not reveal secrets and confidences of a deceased client unless the lawyer reasonably believes, in the exercise of his own best judgment, that to do so would be in the best interest of the deceased client, who would have wanted the information revealed if he were alive. To the extent that this opinion is inconsistent with LE Op. 812, rendered on June 25, 1986, LE Op. 812 is hereby overruled. (See LE Op. 928; Alabama Opinion 85-70; Los Angeles County Bar Association Formal Opinion No. 414; Maryland Opinion No. 85-37; EC:4-6; EC:7-12)

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Legal Ethics Committee Notes. – See also Rule 1.6(a) which impliedly authorizes a lawyer to reveal confidences and secrets of a client in order to carry out the representation.