

Committee Opinion  
May 24, 1990

LEGAL ETHICS OPINION 1355

CONFIDENCES AND SECRETS:  
ATTORNEY'S DUTY WHEN CLIENT  
STATES CRIMINAL INTENTIONS.

You have advised the Committee that an attorney represents a client who is a defendant in a personal injury action. The client has indicated that if the case is tried and a judgment is rendered against him, he will take criminal action against the plaintiff, and may also take criminal action against himself.

You have requested that the Committee opine as to the attorney's obligation to reveal the threatened criminal conduct, since the conduct is contingent upon an event which may or may not occur, or, if disclosure is not required, what, if any, ethical obligations exist. Furthermore, you have inquired as to whom any such required disclosure must be made.

The appropriate and controlling disciplinary rule relative to the circumstances you describe is DR:4-101(D)(1), which mandates 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. The lawyer is required, however, first to 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 lawyer must reveal the criminal intention unless thereupon abandoned.

Furthermore, DR:4-101(B)(1) requires that a lawyer shall not knowingly reveal a confidence (information protected by the attorney-client privilege under applicable law) or secret (information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or detrimental to the client) of his client except where necessary to prevent future crimes by the client or, in fulfilling his duty to the court, to reveal information establishing that the client has perpetrated a fraud upon the court.

While it is a basic precept of the practice of law that a lawyer may not reveal secrets or confidences relative to his client's past crimes, the corollary to such a mandate holds the lawyer's duty to the profession and to society to be paramount so as to require the revelation of the client's intent to commit future crimes. Although the determination as to what falls within the attorney-client privilege is a legal determination beyond the purview of the Committee, the Committee cautions that, since the client is aware that his intended actions would violate the law, his expressed intent to carry out that action may not be a protectable "secret." (See LE Op. 560; Illinois State Bar Association Opinion 87-9 (March 11, 1988)) The Committee's conclusions, however, are predicated on the assumption that the client's intent does constitute a secret under the Code of Professional Responsibility.

The Committee has earlier opined that it was not improper for an attorney to disclose to the appropriate (mental health) authorities the stated intentions of a client to leave the state and commit suicide. (LE Op. 560) The Committee's reasoning indicated that, since,

Committee Opinion  
May 24, 1990

in many states, suicide is considered a crime, the attorney has the duty to disclose such intent.

Under the facts you have presented, the Committee is of the opinion that despite the fact that client's intent to commit the criminal act may be contingent upon a particular sequence of events which may or may not occur, the attorney's duty to disclose such intent is mandated under DR:4-101(D)(1). The Committee believes that such disclosure may only be made, however, after the lawyer has determined that a reasonably prudent and competent lawyer would conclude that the client in fact intended to take such action should the conditions precedent take place. (See Indianapolis Bar Association Opinion 1986-1 (April 29, 1986))

In the view of the Committee, should the lawyer determine that disclosure of the client's threat be required, such disclosure should be made to law enforcement authorities since DR:4-101(D)(1) requires the lawyer to reveal the intention and the "information necessary to prevent the crime." Disclosure is not appropriately made to either the court in which the personal injury action is pending or any person or entity unable to assist in preventing the crime.

Committee Opinion  
May 24, 1990