

Committee Opinion
October 1, 1990

Legal Ethics Committee Notes. – This opinion was overruled in LEO 1643.

LEGAL ETHICS OPINION 1378

CONFIDENCES AND SECRETS –
DISCLOSING A FORMER CLIENT’S
FAILURE TO INCLUDE CERTAIN
ASSETS ON A BANKRUPTCY
PETITION.

You have indicated that an attorney represented a client in a divorce proceeding, and as a result of the negotiations, a separation agreement was signed and personal property divided. Subsequently, because of non-payment of legal fees and other disagreements, the attorney-client relationship was severed. The client then filed a petition in bankruptcy and bankrupted the attorney fees owed, listing the former attorney as a creditor. As a result of the earlier representation, the attorney possesses information that the former client received artwork and antique furniture and expects to receive installment payments from the equity on the marital home. The attorney has learned that the former client neglected to include those items as assets on his bankruptcy petition.

You have asked the Committee to opine as to the propriety of the attorney's disclosure of the former client's failure to include on his bankruptcy petition the assets indicated.

The appropriate and controlling disciplinary rule relevant to the issue you have raised is DR:4-101(B)(2) and (3) which prohibits a lawyer from using a client's secret or confidence to the disadvantage of the client or to the advantage of the lawyer or a third person. Disciplinary Rule 4-101(A) defines "confidence" as information protected by the attorney-client privilege under applicable law, and "secret" as other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

The Committee believes that the information you describe is not protected by the pertinent disciplinary rule since it is information contained in the property settlement between the parties which was not created with any expectation of confidentiality and therefore does not constitute a secret under the rule. Thus, the Committee is of the opinion that it would not be improper to reveal the information you indicate involving assets not included in the bankruptcy petition.

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