

You have presented a hypothetical situation in which an attorney was retained by Mr. A in a divorce case, A v. A, in which Mr. A has custody of his four children, and in which he was seeking child support from Mrs. A. The case, A v. A, is still pending.

You indicate that Mrs. A is having an affair with Mr. B. You also indicate that Mrs. B, who was then still legally married to Mr. B, provided letters to the attorney which Mrs. B felt would benefit Mr. A's case. The letters indicate that Mr. B had a lengthy physical relationship with the 12-year-old daughter of the woman with whom he was living before he married Mrs. B. You indicate that the letters provided are correspondence from Mr. B to the 12-year-old and from the 12-year-old to Mr. B. You further indicate that the letters are sexually explicit and that they contain hand-drawn pictures, names and dates.

You state that in open court in A v. A, Mrs. B attempted to tender the letters to the judge. However, the judge refused to accept the correspondence, since the present orders in A v. A preclude Mr. B from having contact with Mr. A's children.

Subsequently, Mrs. B reached a settlement with Mr. B in their divorce case. One provision of the settlement was that Mrs. B would return the originals and all copies of the letters to Mr. B. Mrs. B has requested that the attorney return the letters to her immediately, however Mrs. B has since agreed to let the attorney copy the letters, which are in the possession of the attorney. The originals have been returned to Mrs. B, pending this opinion.

Further, you indicate that Mrs. A and Mr. B recently had a son together, although Mrs. A is still married to Mr. A. Because Mr. B. has had an illegal relationship with a minor child, Mr. A is adamant that copies of the letters remain in his possession to ensure that Mr. B is never permitted to be near his children.

You have asked the Committee to opine whether, under the facts of the inquiry, (1) the attorney has a duty to disclose the nature of the letters to law enforcement officials; (2) whether the attorney must return copies of the letters to Mrs. B; and (3) whether the attorney may instead simply keep the copies of the letters and not pursue any further course of action.

As to your first question regarding whether or not the attorney has a duty to reveal the letters to law enforcement officials, the Committee opines that the inquiry raises a legal question which is beyond the purview of the Committee. The Committee cautions, however, that it is not opining as to any legal obligation which may arise requiring the attorney to report any suspected child abuse involved in the circumstances described.

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December 14, 1992

As to your subsequent questions dealing with whether the attorney must return the copies of the letters to Mrs. B, the Committee believes that the question of ownership of the copies raises a legal question which is similarly beyond the Committee's purview. Assuming (a) that the originals have been returned to Mrs. B, (b) that the copies are not legally determined to be her property, and (c) that, upon receipt of the originals, no conditions were placed on any photocopying, the Committee is of the opinion that there is no ethical requirement that the attorney return the copies to Mrs. B.