

Committee Opinion  
October 19, 1992

LEGAL ETHICS OPINION 1493

CONFIDENCES AND SECRETS:  
CONFIDENTIALITY OF INFORMATION  
OF EXPERT WITNESS ENGAGED BY  
ATTORNEY'S FORMER  
CLIENT/EMPLOYER.

You have presented a hypothetical situation in which Attorney A was previously employed by the Federal Government, during which time, he used B, a contractor, as an expert witness in a case against C. You advise that litigation in the case is ongoing, and the Federal Government continues to use B as an expert witness. Attorney A now works for D. D is being sued by E, a private party, who has called B to testify as an expert.

You indicate that Attorney A has been asked by D whether A can disclose to D information learned by A as to the strengths and weaknesses of B, as well as other aspects of how he works, for use in the litigation involving E.

You have asked the Committee to opine whether, under the facts of the inquiry, such disclosure regarding B would violate Attorney A's duty of confidentiality or any other ethical obligations owed to his former employer/client, the Federal Government.

The appropriate and controlling Disciplinary Rule related to your inquiry is DR:4-101, which provides, generally, that an attorney may not reveal or use a confidence or secret of his client, except under certain enumerated circumstances.

The Committee is of the opinion that unless A would be revealing confidences or secrets of his former employer/client, the Federal Government, it would not be improper for A to disclose information about the strengths and weaknesses and work habits of his former employer's expert witness. The Committee is of the view that the information to be disclosed is not a confidence or secret under the Disciplinary Rule, since it constitutes only a subjective assessment of an expert witness' demeanor and not information gained in the professional relationship. Under the facts you have provided, the present litigation is not related to any past litigation which involved the expert witness' testimony. Thus, the Committee finds no ethical duty owed either the former employer/client or the expert witness which would inhibit the attorney from conveying his impressions about the expert witness' strengths, weaknesses, or work habits to the new employer who may confront the expert witness as to the current client, E.