

Committee Opinion
June 30, 1993

LEGAL ETHICS OPINION 1533

PLEA AGREEMENTS FOR REDUCTION
OF SENTENCE.

You have presented a hypothetical situation in which a Commonwealth's Attorney regularly enters into the following cooperative agreement with certain defendants:

- (1) The suspect pleads guilty to crime(s) for which he is charged;
- (2) The suspect gives information through interview or grand jury testimony; and
- (3) For every felony indictment that is received [sic] based on a suspect's testimony or information, a set portion of a suspect's own agreed sentence is suspended.

For example, the defendant pleads guilty to contributing to the delinquency of a minor, a class 1 misdemeanor which is punishable by a fine and up to 12 months in jail. The defendant enters into an agreement with the Commonwealth's Attorney and testifies against other defendants. For every felony indictment the defendant helps obtain on others, he gets three months suspended. Thus, you indicate that, if the defendant helps indict four other defendants, he receives no jail time.

You have asked the committee to opine whether, under the facts of the inquiry, the Commonwealth's Attorney's use of such an agreement violates the Code of Professional Responsibility.

The committee recognizes that the court has the ultimate responsibility to review, approve and monitor each plea agreement, making a determination of whether a defendant's plea of guilty is freely and voluntarily made and whether the agreement is contrary to the public's best interest. Thus, the committee is of the opinion that your inquiry raises a legal issue, beyond the purview of this committee, governed by the court's factual determination on a case-by-case basis in accordance with Rule 3A:8 of the Rules of the Supreme Court of Virginia.

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