

Committee Opinion
December 14, 1993

LEGAL ETHICS OPINION 1570

CONFIDENCES AND SECRETS –
GOVERNMENT ATTORNEY: FORMER
ASSISTANT COMMONWEALTH'S
ATTORNEY REPRESENTING FORMER
VICTIM AGAINST FORMER WITNESS
IN CASE PROSECUTED BY ASSISTANT
COMMONWEALTH'S ATTORNEY.

You have presented a hypothetical situation in which a former Assistant Commonwealth's Attorney is now in private practice. While employed as an Assistant Commonwealth's Attorney, the lawyer was involved in a case with future civil suit possibilities. The attorney, now in private practice, would like to pursue the civil action. The action does not involve the former victim against the former defendant. Rather, you indicate that the action involves the victim and a third party, who was a witness in the Commonwealth's case.

You have asked the committee to opine whether, under the facts of the inquiry, it is improper for a former Assistant Commonwealth's Attorney to represent a former victim against a former witness for the Commonwealth, when the Assistant Commonwealth's Attorney prosecuted the original criminal case.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:4-101(B), which provides for the preservation of client confidences and secrets; and DR:9-101(B), which states that a lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee unless the public entity by which he was employed consents after full disclosure.

The committee opines that it would not be improper, under DR:9-101(B), for the former Assistant Commonwealth's Attorney to represent the former victim in the current civil suit provided that: (1) the government, i.e., the Commonwealth's Attorney who formerly employed the Assistant, consents to the representation after full disclosure; and (2) prior contacts with the victim did not involve the purpose of obtaining professional employment. See Maryland State Bar Association Ethics Opinion 88-8 (9/28/87), 901:4312, ABA/BNA Law. Man. on Prof. Conduct.

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