

Committee Opinion
June 11, 1987

LEGAL ETHICS OPINION 920

ADVERSE WITNESS – ATTORNEY
REVEALING AVAILABILITY OF
ADVERSE WITNESS.

Prior to a hearing for unemployment compensation benefits before the Virginia Employment Commission, the employer's attorney noticed an individual present outside the commissioner's office. When questioned, the individual implied that he intended to be a witness at the hearing for the employee. The individual did not appear at the hearing. At the hearing's conclusion, the appeals examiner asked the employee and the employer's lawyer if either had anything else to say. Each party responded in the negative and the hearing was concluded.

Under the above circumstance, it was not improper for employer's attorney not to disclose the availability of the witness. It would have been improper for the employer's attorney to reveal the availability of the witness since he had no duty to do so and to do so may have prejudiced or damaged the attorney's client. [DR:7-101(A)(3), DR:7-102, DR:7-108]

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