

Committee Opinion
October 27, 1987

LEGAL ETHICS OPINION 983

CORPORATIONS – CLIENT
CONFIDENCES AND SECRETS.

You advise that your client previously served as in-house counsel for a small corporation. While serving as in-house counsel, your client became aware that the corporation had issued a prospectus containing false financial information and false statements concerning the corporate structure, procedures and profitability. Shortly thereafter, your client resigned his position with the corporation. Your client did not participate in any way in the preparation or dissemination of the prospectus. You wish to know what your client responsibility is towards the public and stockholders of the corporation in light of his obligation of confidentiality to his former client. You also wish to know whether your client has any criminal culpability relative to the prospectus.

Canon 4 of the Code of Professional Responsibility deals with preservation of the confidences and secrets of a client. Specifically, DR:4-101(C)(3) states that “a lawyer may reveal information which clearly establishes that his client has, in the course of the representation, perpetrated upon a third party a fraud related to the subject matter of the representation.” DR:4-101(D)(1) states that “a lawyer shall reveal the intention of his client, as stated by the client, to commit a crime and the information necessary to prevent the crime, but before revealing such information, the attorney shall, where feasible, advise his client of the possible legal consequences of his action, urge the client not to commit the crime, and advise the client that the attorney must reveal the client's criminal intention unless thereupon abandoned, and, if the crime involves perjury by the client, that the attorney shall seek to withdraw as counsel.”

Disciplinary Rule 4-101(C)(3) clearly gives your client the right to reveal his former client's fraudulent activity. Pursuant to DR:4-101(D)(1), your client has a duty to advise the corporation of the possible consequences of continuing to issue a prospectus containing false information, urge the corporation not to issue the prospectus, and advise that unless the corporation abandons its criminal intention the lawyer will reveal the corporation's criminal intent.

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Legal Ethics Committee Notes. – The attorney confronted with the situation described in this opinion should follow the direction given in Rule 1.13.