



Committee on Professional Ethics

Opinion # 454 - 12/30/76 (84-76) Topic: Disclosure; confidences and secrets of client.

Digest: Disclosure of confidences and secrets no longer required.

Code: Canons 4 and 7
DR 4-101(B) and (C), 7-102
(B)(1)

QUESTION

Subsequent to the filing of a petition in bankruptcy and during the pendency of proceedings, a lawyer was informed by his client, the bankrupt, that he had concealed assets which should have been turned over to the trustee. The client has refused to make full disclosure and the lawyer has withdrawn from his representation.

Under the circumstances stated, must the lawyer now disclose the existence of the concealed assets?

OPINION

The relevant provisions of the Code of Professional Responsibility are contained in Canons 4 and 7. Canon 4 enjoins lawyers to "preserve the confidences and secrets of a client." Canon 7 requires that lawyers represent their clients "within the bounds of the law."

One of the central problems to address the draftsmen of the Code concerned a resolution of the countervailing considerations which underlie these two Canons. Initially, the draftsmen attempted to resolve this apparent conflict by forbidding disclosure under certain circumstances, permitting it at the lawyer's discretion in others and, finally, requiring disclosure to prevent the perpetration of a fraud committed in the course of the lawyer's representation of his client. Cf., DR 4-101(B) and (C) with DR 7-102(B)(1).

On November 6, 1976, by amending DR 7-102(B)(1) to provide that disclosure would not be required "when the information is protected as a confidence or secret", this Association effectively eliminated the only provision of the Code which theretofore might have mandated disclosure under the circumstances stated herein.

Since there is no longer any provision of the Code which requires disclosure of a client's confidences or secrets, the question posed must be answered in the negative.
