

# ADVISORY ETHICS OPINION 87-17

## SYNOPSIS:

A defense attorney need not disclose to the prosecution the existence of a bank statement, not relevant to the charges on which he represents the client, that allegedly reflects money illegally obtained by his client.

## OPINION:

An attorney, assigned to represent a client in a criminal case, was given a bank statement of the client's by a relative of the client. The relative also told the attorney that the money in the bank account had been obtained illegally by the client. According to the attorney, the bank statement and the money, allegedly obtained illegally, have no relationship to the charges on which the attorney represents the client. The client has asked the attorney to give him the bank statement. The client had written a note to the court clerk, requesting a new attorney, but subsequently told the attorney that he wanted the attorney to continue representing him. The attorney has requested the committee's opinion as to two questions:

1. What should he do with the bank statement?
2. Should he seek leave to withdraw as counsel for the client?

Several Disciplinary Rules come into play in determining answers to the attorney's questions. DR 4-101(A) defines "secret" as information gained in the professional relationship, . . . the disclosure of which would be likely to be detrimental to the client. DR 4-101(C)(2) allows a lawyer to reveal secrets when permitted under the Disciplinary Rules or required by law or court order. DR 7-102 (A) (3) prohibits a lawyer from concealing or knowingly failing to disclose that which the lawyer is required by law to reveal. DR 7-109(A) states that a lawyer shall not suppress any evidence that he or his client has a legal obligation to reveal or produce.

For the purposes of this opinion, we assume that the bank statement will not be used as evidence in the trial of the crimes with which the client is charged, and that the attorney has no information that confirms or impeaches the relative's statement regarding the source of the money.

An analogy can be drawn between the duty to disclose evidence and the duty to reveal a fraud perpetrated by the client, treated in DR 7-102(B). In Opinion No. 81-1, this committee examined the relationship between DR 4-101 and DR 7-102 and construed the disclosure requirement narrowly, opining that disclosure is required only where the information clearly establishes the fraud.

We are unaware of any legal requirement that the attorney disclose the bank statement to the prosecution, when it is not relevant to the representation of the client. The attorney should return the bank statement to the client.

As long as the client desires that the attorney continue his representation, there is no reason why the attorney should withdraw.