

Ethics Opinion

890301

QUESTION PRESENTED: May an attorney reveal confidential information when a client has accused the attorney of criminal conduct and where it appears that the attorney and client are under investigation and may face possible criminal charges?

ANSWER: Yes.

ANALYSIS: The Rules of Professional Conduct Rule 1.6(b)(2) provides:

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(b) a lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

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(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representations of the client.

Comments 17 and 18 to this rule indicate that where a lawyer is charged with complicity in connection with a client's conduct, or is charged with wrongdoing, the lawyer has the right to make disclosure. Such comments further indicate that the lawyer should make every effort to disclose no more information than is reasonably necessary to vindicate himself/herself. In addition, there is authority to the effect that the lawyer may make disclosure even though a charge or claim has not actually been filed against the lawyer "where there is a serious possibility of a charge or claim . . ." See *Meyerhofer v. Empire Fire and Marine Insurance Company*, 497 F.2d 1190 (2d Cir. 1974), cert. denied, 419 U.S. 998 (1975); *In re Friend*, 411 F.Supp. 776 (S.D.N.Y. 1975).

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