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Source: State Ethics Opinions > New York State - New York City > Opinion 1987-3 (4/30/87) Government lawyers; Confidentiality; Candor toward tribunals.

**Opinion 1987-3 (4/30/87) Government lawyers; Confidentiality; Candor toward tribunals.**

A government lawyer who by statute represents both the agency and a complainant in an employment discrimination case and who learns information from the complainant that would be materially adverse to the complainant's case may not disclose such information. Any information conveyed to the lawyer by the complainant in the course of the representation should be treated as confidential. As a government lawyer, the lawyer is not functioning primarily on behalf of the sovereign but is representing the complainant and must give priority to the client's interests. Where the failure to disclose the client's confidential information will mislead the tribunal, the lawyer should seek his client's consent to disclose the information. If the client does not consent, the lawyer should seek to withdraw. Although the information is considered a confidence or secret, withdrawal is recommended because the lawyer's duty of candor to the tribunal would take precedence over his duty of confidentiality to his client if the tribunal asks the lawyer about the information or if something said at the hearing or trial would be misleading if the information were not disclosed. If the lawyer represents only the agency and learns information from the complainant that may be damaging to the complainant's case, the lawyer may disclose the information so long as prior to learning the information he informs the complainant that he only represents the agency. However, if it is clear that the complainant views the lawyer as his counsel and the lawyer acts accordingly, any information that the complainant tells to the lawyer should be treated by the lawyer as confidential. In all cases where the lawyer withdraws, no other counsel employed by the agency may accept the representation. Opinions 82-17, 82-39, 1986-7, 1986-8; DRs 2-110(C)(1)(b), 4-101(B)(1)(2), 7-102(A)(B)(1); ECs 7-14.

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