



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in May 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.6, 5.1, 5.2, and 5.3. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

**Opinion No. 90-27
March 9, 1991**

Topic: Confidences and Secrets

Digest: Improper for Public Defender's Office to disclose secret of one client to another client represented by different Assistant Public Defenders in unrelated cases.

Ref.: 1990 Illinois Rules of Professional Conduct, Rules 1.6, 5.1, 5.2 and 5.3

FACTS

The Public Defender's Office was appointed to represent two clients on unrelated matters. Client A is represented by Assistant Public Defender X and Client B is represented by Assistant Public Defender Y. To mitigate the case against him, Client B begins cooperating with the police to investigate a contract murder. At the time Client B is being "wired" by the Sheriff's Office, Assistant Public Defender Y learns that Client A is represented by his office on an unrelated matter and that Client A is also the target of the contract murder investigation. Without consulting Assistant Public Defender X, withdrawal orders from the cases involving both Client A and Client B were secured by Assistant Public Defender Y.

QUESTION

Does the Public Defender's Office owe any duty to inform Client A of the ongoing police

investigation of the contract murder allegations?

OPINION

This opinion assumes that Assistant Public Defender Y representing Client B learned of the murder investigation of Client A in the course of his professional relationship with Client B.

Under those circumstances, the Public Defender's Office has no duty to inform Client A of the murder investigation. To the contrary, to do so would be improper.

Rule 1.6(a) provides that, except in circumstances not relevant to the inquiry:

"...a lawyer shall not, during or after the termination of the professional relationship with a client, use or reveal a confidence or secret of the client known to the lawyer unless the client consents after disclosure."

Rule 5.1 provides for the imputed responsibility of law firm partners and supervising lawyers to act and assume responsibility for conformance with the Rules.

Rule 5.2 binds subordinate lawyers to the Rules acting at the direction of another person in most situations.

Rule 5.3 extends the professional obligations of the lawyer to non-lawyer employees.

There are many ISBA opinions interpreting the provisions of Rule 1.6(a) and its predecessor provision of the Code of Professional Responsibility, Rule 4-101(b). Almost without exception, those opinions also involve conflict of interest issues but all strictly interpret the prohibition against revealing or using client confidences or secrets in a variety of factual situations, in the absence of informed client consent. For example, Opinion 809 concluded that the prohibition against revealing or using confidences precludes representation of a client in circumstances involving multiple clients in divorce matters; Opinion 810 applied the Rule to a wrongful death case against a defendant represented by the attorney in related traffic offenses; Opinion 870 involved a situation where the attorney had a financial interest in the client's competitor; Opinion 88-7 applied the Rule to a former Village Attorney in a later suit against the village even when the confidences and secrets were allegedly public knowledge; Opinion No. 88-13 extended the Rule to apply to information disclosed by a client's friend as a secret "gained in the professional relationship;" Opinion No. 89-13 involved the disappearance of a criminal defendant; Opinion No. 89-17 barred the disclosure of confidences by the attorney employed by an insurance company to represent its insured to insurance company house counsel; and

applied the prohibition to forbid disclosure of the names and social security numbers of client-applicants for legal assistance by legal services providers to a governmental agency funder.

These opinions illustrate that a fundamental principle in the lawyer-client relationship is that the lawyer maintain the confidences and secrets of his client. Rule 1.6, which implements that principle, applies to all employees, associates and partners of the lawyer to whom the confidence or secret was communicated. See ISBA Opinions 691, 701, 704 and 87-11. Rules 5.1, 5.2 and 5.3 require reasonable efforts and fix responsibility for actions to ensure compliance with the Rules of

Professional Conduct as to both lawyer and non-lawyer employees of a law firm.

On the other hand, there is nothing in the Rules which require a lawyer to disclose information to his client on a matter unrelated to the representation even when it would benefit the client, particularly when to do so would require that lawyer to violate the Rule imposing confidentiality. However, Assistant Defender X could properly advise Client A not to discuss his case or communicate any information against his interests to any person other than his attorney.

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