

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #69 - 2/2/68 (28-67)

Topic: Confidences of Client.
Legal Services for the Indigent.

Digest: Lawyer may disclose certain information of client's case to proper authority where lawyer has fully advised client of, and endeavors to protect him from consequences of disclosure.

Canon: Former Canon 37

QUESTION

The Nassau County Department of Social Services has established a demonstration project, called Office for Legal Services, to provide indigents with legal services in civil matters. Eligible clients are given freedom of choice of an attorney to represent them. The attorney handling the case is to be paid by the County through his department on the basis of a stated hourly rate.

The responsibility and direction of the program rests on the Administrator, Legal Services, of the Nassau County Department of Social Services, which is headed by a Commissioner of Social Services. In order to receive payment for his services, the attorney must inform the Administrator of the facts pertaining to the particular case and obtain from the Administrator prior approval of the services proposed for the client. It is contemplated in each case that the client will sign an authorization permitting such disclosure.

A statement of policy prepared by the Office for Legal Services includes the following:

"Although the client will sign an authorization permitting the attorney to inform the Administrator of the facts pertaining to the particular case, necessary for a determination as to approval as well as payment, such information will not be made available to anyone except proper authorities. The Administrator will, in this respect, be the alter ego of the attorney."

Is it ethically proper for an attorney on being consulted by a client to make such disclosure to the Administrator for the purpose of qualifying his client's case for payment of legal fees by the Office for Legal Services?

OPINION

Canon 37 provides: "It is the duty of a lawyer to preserve his client's confidences."

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The statement of policy of the Office for Legal Services recognizes the importance of preserving this confidential relationship in order "that the welfare client be enabled to exercise the same rights and privileges as any individual in any other strata of society." This document also includes the following:

"CONFIDENTIALITY - The confidential relationship between attorney and client, the bulwark of the common law since time immemorial, will be maintained. The client will get the same protection and consideration in regard to any matters discussed with an attorney as is recognized in the general practice of law."

We are in accord with this statement of confidentiality. It is the opinion of the Committee, however, that the provision in the policy statement allowing confidential information to be made available to proper authorities is to some extent inconsistent with the statement of confidentiality.

Since the only purpose of transmitting information to the Administrator is to enable him to decide whether payment for the services should be approved, the lawyer should disclose only such confidential information as is reasonably necessary for this purpose, and then only if in the lawyer's opinion his client has knowingly and intelligently consented to such disclosure. The lawyer has a special responsibility in the case of welfare clients who often have no choice but to give consent and who may not be sufficiently knowledgeable to understand the possible adverse consequences of disclosure. Therefore, it is part of the duty of the attorney not only to advise his client fully, as to the consequences of disclosure, but to endeavor to protect him from such consequences.

Opinion #70 - 2/2/68 (35-67)

Topic: Firm Name.
Retired Partner.

Digest: Local custom dictates use of retiring partner's name.

Canon: Former Canon 33

QUESTION

Question has been raised as to whether partner A who purchased the entire interest of retiring partner B in the two-man law firm "A and B" may continue to use B's name as part of the firm name and continue to keep B's name in a list of names on the left side of the firm letterhead with an indication, in parenthesis, that B is retired. Along with B's name in that list will appear the names of A and one associate.