



Committee on Professional Ethics

Opinion #473 - 9/7/77 (40-77) Topic: Confidences of client; accounting information; outside service agency.

Digest: With proper safeguards and absent client's objection, lawyer may supply confidential information to outside service agency for certain limited purposes, including office accounting; lawyer not required to give client prior notice of his intention to divulge such information.

Code: DR 4-101(D);
EC 4-3

QUESTION

May a lawyer disclose to his outside accounting agency information relating to a trust account maintained for his client's funds?

OPINION

The utilization by lawyers of independent agencies to provide sophisticated data processing and accounting services has become relatively common in recent years. Recognizing the need to provide these agencies with certain information from files which lawyers might otherwise be required to hold inviolate, EC 4-3 of the Code of Professional Responsibility explains:

"Unless the client otherwise directs, it is not improper for a lawyer to give limited information from his files to an outside agency necessary for statistical, bookkeeping, accounting, data processing, banking, printing or other legitimate purposes, provided he exercises due care in the selection of the agency and warns the agency that the information must be kept confidential."

The central interpretative question posed by EC 4-3 is whether the phrase "unless the client otherwise directs" implicitly requires vel non that the lawyer notify his client of his intention to divulge information from the client's files to an outside agency.

The possibility of misunderstandings between lawyer and client obviously would be removed by an express authorization from the client to divulge such information. For this reason, it seems that the better practice would be for the lawyer to communicate his intentions to the client.

Nevertheless, while prudence would suggest that the lawyer communicate his intentions, we cannot say that the Code requires that he do so.

OVER---

Clearly, there are various kinds of confidential information which the lawyer can safely assume he is at liberty to communicate to outside agencies for certain limited purposes related to his retainer or necessary for the efficient operation of his office. Such information includes matters that the client has not expressly requested be held in confidence and the disclosure of which would not be embarrassing or otherwise detrimental to him. Even where disclosure of the information to interested or hostile parties might prove detrimental to the client, his lawyer may still disclose that information to outside agencies under circumstances where the client might have foreseen such disclosure and would not reasonably be expected to object to the use of such information for the limited purposes to which the lawyer intends that it be put by those agencies. See, ABA Inf. 1364 (1976) and ABA Inf. 1002 (1968); see also, Ariz. Op. 190A (1966) indexed at 5941, O. Maru, Supplement to the Digest of Bar Association Ethics Opinions (1972); cf., N.Y. County 413 (1953). The fact that the circumstances make disclosure reasonably foreseeable, relieves the lawyer of any obligation to notify his client of his intentions. Once the lawyer has been directed not to reveal the information to anyone else, however, he can no longer operate on the assumption that his client would consent to the disclosure.

Where the lawyer maintains a trust account for his client's funds, it is reasonable to assume that the client will foresee the possibility of disclosing such information for purposes of office accounting. Hence, consistent with the foregoing principles, unless and until the lawyer is instructed by his client to the contrary, he is free to divulge information relating to a trust account maintained for his client's funds to an outside agency for purposes of office accounting. See, N.Y. State 95 (1969) and ABA Inf. 1364, supra.

Throughout, the lawyer should comply with the proviso set forth in EC 4-3 to exercise due care in the selection of the agency and warn the agency that the information must be kept confidential. Where additional precautions appear necessary to preserve confidentiality, the lawyer must exercise reasonable care to prevent the agency from revealing the information which he has divulged. See, DR 4-101(D).

For the reasons stated, and subject to the aforementioned conditions, the question posed is answered in the affirmative.
