



## Committee on Professional Ethics

Opinion #485 - 6/2/78 (19-78)

Topic: Confidential communications;  
disclosure of client  
confidences by Legal Aid  
lawyers to not-for-profit  
research organization.

Digest: Not proper for Legal Aid  
lawyers to divulge clients'  
confidences to not-for-  
profit research organization  
in absence of clients'  
consent.

Code: DR 4-101(B) and (C);  
EC 8-1, 2 and 9.

### QUESTION

May Legal Aid lawyers divulge their clients' confidences to a not-for-profit research organization and its representatives in the absence of their clients' consent?

### OPINION

The Vera Institute of Justice is a private, not-for-profit corporation which carries out research and other projects designed to improve the functioning of the criminal justice system. It has received funding from the New York State Division of Criminal Justice Services to study the dispositional process in juvenile delinquency and person-in-need-of-supervision cases in the New York City Family Courts. In that connection it proposes to interview the judge, prosecuting attorney, defense attorney, arresting police officer and probation officer involved in each of 500 cases to determine what information was available to them about the case and the major factors that influenced their actions in the case. Interviews with defense attorneys can be expected to require revelation of client's confidences or secrets in many cases. The Juvenile Rights Division of the Legal Aid Society, which provided defense counsel in most of the cases involved in Vera's study, has asked for the opinion of this Committee as to whether its attorneys can disclose such confidences or secrets in the absence of client consent, which it feels it cannot undertake to obtain for the following reasons:

"The youth of the clients and the complexity of the explanation required to obtain a valid consent would make the process far more time-consuming than could be justified in view of the heavy caseload carried by the staff. Furthermore, such consent would be almost impossible to obtain from those clients placed in

residential care facilities throughout the state."

We are of the opinion that disclosure of the secrets or confidences of a client without the informed consent of the client would constitute a clear violation of DR 4-101(B) and cannot be condoned, even for so worthy a purpose as the Vera study. In reaching this conclusion we are not unmindful of the special obligations of lawyers under Canon 8 of the Code of Professional Responsibility to assist in improving the legal system. See, EC 8-1, EC 8-2 and EC 8-9.

The Committee on Ethics and Professional Responsibility of the American Bar Association considered a similar question four years ago. ABA Inf. 1287 (1974). There an outside non-profit research group wished to interview clients of a legal services office to gain research data. The Committee was of the opinion that the identity of the clients of the legal services office was itself a "confidence" protected from divulgence in the absence of consent; therefore, the initial contact of any such client seeking consent could perforce only be made by the legal services office itself. Further, the Committee stressed that the staff of the legal services office would have to make certain in seeking consent that full disclosure within the meaning of DR 4-101(C)(1) was made to the client. In that connection the Committee made the following observation:

"In context of full disclosure to clients in poverty groups who in general would tend to be lacking in education and sophistication and might be more likely to be submissive to such requests, particular care must be taken to assure that they have a full understanding of what they are being asked to consent to and further that whether they consent is a completely voluntary matter with them, a consent which they can deny without a sense of guilt or embarrassment. As stated in F.O. 250, 'The duty of an attorney to his client is one of great delicacy and responsibility and sometimes of apparent hardship.' That owed to the Legal Services' client is no less than that owed to any other client."

Ethics committees have reached the same conclusion when the outside agency seeking disclosure was the General Accounting Office of the United States Government (ABA Inf. 1081 [1969]), the lawyer-audit committee of a local bar association (ABA Inf. 1137 [1970]), administrative officials overseeing a government-sponsored legal services scheme (N.Y. State 69 [1968]), a non-profit research organization (ABA Inf. 762 [1964]), an educational institution (Ore. 105 [1962]), the Federal Trade Commission (N.Y. County 428 [1954]) and a student researcher preparing a term paper (ABA Inf. 1150 [1970]).

The Juvenile Rights Division points out that a federal statute may subject to fine some (but not all) of the possible second-tier recipients of client confidences in the Vera study if they in turn divulge the confidences without consent of the Juvenile Rights Division. 42 U.S.C. §3771; see also, 28 C.F.R. 22.1, et seq. Accepting that interpretation of the law as accurate (and this Committee does not pass on matters of law), we are nevertheless of the opinion that it is irrelevant to a resolution of the ethical problem. Canon 4 does not concern itself with the duties and responsibilities of one who obtains unauthorized disclosures from a lawyer; it requires the lawyer himself to preserve the confidences and secrets of his client. We regard that duty as dispositive of the inquiry in this case.

For the reasons stated, the question posed is answered in the negative.

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