



## Committee on Professional Ethics

Opinion #490 - 7/31/78 (26A-78) Topic: Confidences and secrets; independent professional judgment; legal service organization

Digest: Staff attorneys of legal service organization should not be required to report to its board of directors on the manner in which they are handling specific cases in the absence of client consent and, even then, such reports should be made only on the understanding that there will be no interference by the board with the exercise of the staff's independent professional judgment.

Code: Canons 4 and 5  
EC 4-3, 4-5, 5-1  
DR 4-101(A), (B) and  
(C) (1)

### Question

A federally funded, non-profit legal service organization is by law required to operate with a board of directors, the majority of which must consist of lawyers practicing in the area serviced by the organization. The other members of the board are non-lawyers.

Under the circumstances stated, may the organization's executive director require its staff attorneys to submit to him written status reports relating to specific cases for the purpose of discussing with the organization's board of directors the manner in which such cases are being handled?

### Opinion

There is at the threshold of the question posed a problem of identifying the lawyer for the indigent client. Consistent with prior authority, we believe that the solution to this threshold problem lies in analogizing the organization's legal staff to a law firm in private practice. See, N.Y. State 102 (1969). All members of the organization's legal staff would thus be deemed to be like partners or associates of the same

firm, at least for the limited purpose of preserving the confidences and secrets of their clients. See, N.Y. State 489 (1978).

This is not to say, however, that the organization's board of directors, which it will be noted consists in part of non-lawyers, should be viewed as an integral part of the "firm" that its legal staff represents in our analogy. The board is not, and should not be deemed, vested with the same professional rights and obligations as the organization's legal staff.

While it remains for the board to formulate broad organizational policy, considerations of this magnitude need not concern the relative minutia involved in the handling of individual cases. To whatever extent practicable, and consistent with the board's proper interest in seeing that its policies are implemented, the board should be isolated from the day to day operations of the legal staff and, more particularly, the staff's handling of specific cases. See, ABA Inf. 334 (1974); cf., ABA Inf. 324 (1970).

Preserving the functional independence of the organization's legal staff, especially from the influences of non-lawyers, finds considerable support in the Code of Professional Responsibility. Thus, for example, EC 5-24 explains in relevant part:

"Various types of legal aid offices are administered by boards of directors composed of lawyers and laymen. A lawyer should not accept employment from such an organization unless the board sets only broad policies and there is no interference in the relationship of the lawyer and the individual client he serves."

See also, Canon 5 and DR 5-105(A) and (B).

We agree with the Standing Committee on Professional Ethics of the American Bar Association in holding that the confidences and secrets reposed in the organization's legal staff should not be divulged to the members of its board, absent the informed consent of their clients. See, ABA Inf. 1137 (1970) and ABA Inf. 1081 (1961); see also, N.Y. State 485 (1978), DR 4-101(C)(1), EC 4-3 and EC 4-5. This rule would seem especially apt where some members of the organization's board are non-lawyers and are therefore not subject to the professional strictures of our Code.

In seeking to obtain consent for the making of such disclosures, the staff should be particularly sensitive to any element of submissiveness on the part of their indigent clients; and, such requests should be made only under circumstances where the staff is satisfied that their clients could refuse to consent

without any sense of guilt or embarrassment. See, N.Y. State 485, supra and ABA Inf. 1287 (1974).

Given the context of the question posed, it should be noted that there is a double aspect to the necessity of obtaining client consent. First, it is necessary that the client knowingly waive his Canon 4 right to insist that his lawyer not disclose secret or confidential information. DR 4-101(A), (B) and (C)(1). Second, and of nearly equal importance, the client must be satisfied that in disclosing the manner in which his case is being handled to someone other than his lawyer, such disclosure will not impair the effectiveness of his representation. See, EC 5-21.

Notwithstanding client consent to such disclosure, the organization's executive director must continue to bear the burden of securing its staff from any interference by the board in the handling of specific cases. One of the simplest and most expedient methods of obtaining this result, while providing the board with such information as would seem reasonably necessary to enable it to fulfill its responsibilities, would be to veil both the staff attorneys and their clients in anonymity. To be sure, there may well be many other means of securing the same end. The distribution of detailed status reports as prepared by the organization's staff attorneys would not, however, be consistent therewith.

For the reasons stated, subject to the qualifications hereinabove set forth, the question posed is answered in the negative.

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