

**ETHICS OPINION NUMBER 101
OF THE MISSISSIPPI BAR
RENDERED JANUARY 29, 1985
AMENDED APRIL 6, 2013**

CLIENT CONFIDENCES - Legal Services attorney may not reveal client confidences or secrets to auditors from Legal Services Corporation.

The Ethics Committee of The Mississippi Bar has been requested to render an opinion on the following facts:

A local nonprofit legal services corporation, ("the local agency"), organized and operated solely to provide legal services in non-criminal matters to low income persons receives funds from a private federally funded corporation. As part of its undertaking with the federally funded corporation, the local agency assured and certified as a grant condition that "it will upon request cooperate with all data collection and evaluation activities undertake by the corporation, and give any authorized representative.... access to all records, books, papers or documents, provided that neither the corporation nor the. . . (sic) shall have access to any reports, records, or information subject to the attorney client privilege.

In the process of conducting its data collection and evaluation activities, the federally funded corporation has demanded that the local agency permit representatives of the federally funded corporation to examine the files of clients and the contents thereof. Except as reflected by the grant award letter, the local agency is subject to only such control and oversight by the federally funded corporation as is authorized by the Legal Services Corporation Act and regulations promulgated thereunder. The local agency permits the federally funded corporation to inspect all fiscal records, furnishes information on cases handled, none of which identifies any particular clients. The federally funded corporation has devised a program whereby it proposes to determine the quality of services furnished by the local agency, and it insists that in order to do so its evaluators

must examine all or some of the local agency files relating to particular clients.

A typical file could contain attorney's work product, including memoranda reflecting trial strategy and tactics in matters involving litigation or proposed litigation. On occasion, the local agency does or may represent clients in claims or suits against governmental agencies, including the federally funded corporation referred to herein.

The basic question is whether the local agency and/or its staff lawyers would violate the Mississippi Rules of Professional Conduct by opening files for inspection as discussed above.

This request raises the very difficult problem of balancing the need for proper stewardship of public monies with the demands of confidentiality on behalf of the client.

Client confidentiality is based on two essential considerations. One is the right of the client to be protected from the effects of the disclosure of certain information. If the client advises the attorney of these matters the client must be safeguarded against their being compromised. The other consideration is the validity of the adversary system as it exists in this country. If clients cannot feel secure in communications with their lawyers they will frequently fail to make the full disclosure so essential to proper representation in our system. Thus the notion of confidentiality exists to protect the client and to protect the system.

Under Mississippi statute it is the duty of attorneys "To maintain inviolate the confidence and, at every peril to themselves, to preserve the secrets of their clients, " Miss. Code Ann. § 73-3-37(4)(1972). No Mississippi statute or case defines "confidence" or "secret" in the context of the above statute.

Rule 1.6 of the Mississippi Rules of Professional Conduct (MPRC) provides as follows:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interest or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

(6) to comply with other law or a court order.

Rule 5.4(c), MRPC, provides that a "lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services."

Based on all the foregoing we find as follows:

(1) Legal services lawyers owe the duty of confidentiality to the person for whom they render legal services, just as do other lawyers;

(2) Accordingly, the legal services lawyer cannot reveal client confidences or secrets to auditors from the legal services corporation, or to anyone else;

(3) Despite our statements above, if the information to be disclosed is a matter of some public record that shows that the client is a client of the legal services office or one or more of its attorneys, the matter is not "secret" merely because it identifies the client;

(4) A lawyer work product is not a "confidence" or a "secret" within the context of this opinion merely because it is work product;

(5) Any information may be released if the client, having been fully apprised of the significance of such release, and having been assured that no sanctions will be imposed on him for refusal to agree to such release does in fact consent to the release of the information.

We are mindful of the importance of audits where public funds are involved, and readily agree that a mere review of statistical data is hardly a satisfactory inspection. We are also aware that Rule 1.6, MRPC, holds that, unless the client directs otherwise, a lawyer may not give out information relating to the representation of the client unless the disclosure is impliedly authorized in order to carry out the representation.