

**ETHICS OPINION NUMBER 124
OF THE MISSISSIPPI BAR
RENDERED SEPTEMBER 5, 1986
AMENDED APRIL 6, 2013**

CLIENT CONFIDENCES - An attorney may reveal communications with his client when required by court order and the lawyer is accused of wrongful conduct.

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

A lawyer represented a client in a criminal case. After a trial, the client was convicted and sentenced to the Mississippi Department of Corrections. After commencing his sentence, the client moved pro se in the trial court for an out-of-time appeal, and alleged that his lawyer failed to appeal his conviction as he requested. In considering the motion, the court ordered the lawyer to submit an affidavit concerning his discussions with the client concerning an appeal.

Without violating Mississippi Rules of Professional Conduct (MRPC), may the lawyer reveal communications with his former client in an affidavit required by court order?

This inquiry is governed, in part, Rule 1.6(b)(6), MRPC, which provides that a lawyer may reveal confidences or secrets when required by law or court order. *See also* Ethics Opinion No. 95 of The Mississippi Bar.

Additionally, in this situation, the work and conduct of the lawyer has been attacked by the client. Rule 1.6(b)(5) states that lawyer may reveal such information to the extent the lawyer reasonably believes necessary to establish a claim of defense on behalf of the lawyer in a controversy between the lawyer and the client. This exception is not limited to proceedings in which the lawyer is a party; it should apply in any judicial proceeding where the lawyer is accused of wrongful conduct. It would appear incongruous for a client to allege misconduct or incompetence of a lawyer and then have the lips of that lawyer sealed. Fairness should require a full exploration of facts surrounding a lawyer's work for a convicted client.

The committee is, therefore, of the opinion that a lawyer may be required by court order to reveal communications and discussions with his client when the client has accused the lawyer of wrongful conduct.