



ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in May 2010. Please see the 2010 Illinois Rule of Professional Conduct 1.6(a) and (b)(5). This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

**Opinion No. 94-10
November, 1994**

Topic: Confidence of Client: permissible disclosure of client confidences or secrets.

Digest: A lawyer may, in the exercise of discretion, disclose a client's confidences to defend himself against accusation of wrongful conduct.

Ref.: Illinois Rules of Professional Conduct, Rules 1.6(a) and 1.6(c)(3).

FACTS

A lawyer was retained by a client to handle a dissolution of marriage case, which he tried to judgment. The client refused to pay the lawyer fees and the lawyer filed a post-trial motion for attorney's fees against his client. The client responds by discharging the attorney and filing a pro se motion for a new trial. As grounds for his motion, the client alleges numerous breaches of duty by his former lawyer.

QUESTION

Can the lawyer disclose a client's confidences when the client's accusations against the lawyer are being made to obtain a new trial in an action that the lawyer is not a party?

OPINION

The Rules require a lawyer to reveal a client's confidences or secrets only where it would be necessary to prevent the client from committing an act that would result in "death or serious bodily harm." (See Rule 1.6(b)). Rule 1.6(a) states that a lawyer shall not reveal a client's confidences, without consent, unless permitted by Rule 1.6(b) or Rule 1.6(c).

Although under the fact situation presented the lawyer is not required to reveal his former client's confidences, he "may" reveal them to defend himself from accusations of wrongful conduct. Rule 1.6(c) provides in part:

- (c) A lawyer may use or reveal....
 - (3) confidences or secrets necessary to establish or collect the lawyer's fee or to defend the lawyer or the lawyer's employees or associates against an accusation of wrongful conduct.

Regardless of whether the lawyer is an actual party to the litigation, the Committee is of the opinion that the intent of Rule 1.6(c)(3) is to allow the attorney to reveal in the forum where the accusations are made those confidences reasonably necessary to defend against "accusations" of wrongful conduct regardless of whether they are made in litigation in which he is a party.

The lawyer "may" also, in his motion for fees, reveal client confidences that are necessary to determine that issue. This permissible disclosure is clearly expressed in Rule 1.6(c)(3).

It is also possible in the fact situation presented that the attorney could be called as a witness. If this would occur he could be ordered by the court to answer questions that would reveal his former client's confidences. Rule 1.6(c) gives the lawyer the discretion to reveal his client's confidences under those circumstances. Rule 1.6(c) provides in part:

- (c) A lawyer may use or reveal:
 - (1) confidences or secrets when permitted under these Rules or required by law or court order.

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