



ISBA Advisory Opinion on Professional Conduct

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This Opinion was **AFFIRMED** by the Board of Governors in January 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.6(a), 1.7, 1.14, and 5.4(c). 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. 00-02
October, 2000

Topic: Confidentiality

Digest: A lawyer may not divulge a psychiatric report utilized in a Social Security Disability hearing to the adult claimant's parent unless the attorney is of the opinion that the adult claimant is disabled to the extent that a guardian should be appointed for the claimant.

Ref.: Illinois Rules of Professional Conduct, Rules 1.6 (a), 1.7(b), 1.14, 5.4 (c)
In re Anonymous, 654 N.E.2d 1128 (Ind. 1995)
ABA Informal Opinion 89-1530
ABA Annotated Rules of Professional Conduct, 4th Ed. (1999).

FACTS

The father of an adult child retained an attorney to assist his daughter in obtaining Social Security Supplemental Security Income Benefits. The father believed his daughter was disabled because of a psychiatric condition. The father signed the application, "father for daughter."

The attorney hired a psychiatrist to examine the child and filed the application with a report from

the psychiatrist which diagnosed the child as paranoid schizophrenic. The report opines that her psychiatric condition disables her from signing the application or releases for medical information, however, she is otherwise able to manage her own affairs.

The lawyer successfully represented the child at the hearing.

The child has not been declared incompetent and no guardian has been appointed for the child.

The father requests a copy of the psychiatric report from the lawyer. He has given no reason for the request.

QUESTION

May the attorney release the psychiatric report to the father?

OPINION

The daughter is the lawyer's client because she is the one for whom the lawyer performed legal services. The fact that the father retained the lawyer to represent the child does not change the result. Rule 5.4 (c) is clear that a lawyer may not permit the 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." The lawyer may not reveal any confidences or secrets of the client unless the client consents after disclosure. Rule 1.6 (a).

The lawyer's ethical duty of confidentiality encompasses all information relating to the representation regardless of whether it comes from the client or from another source. It applies even when the information is available from some other source, even a public source. This confidentiality may be the best known principle of legal ethics known by the public. *In re Anonymous*, 654 N.E.2d 1128 (Ind. 1995). Here, the lawyer received information regarding his client's and her ex-husband's assets. He utilized that information to collect a debt from the client's ex-husband for another client, the state welfare department after withdrawing as the wife's attorney. The ex-husband then joined the former client as a party defendant to the suit. The court held that it was immaterial that the lawyer could have learned of the assets from a public source and that he no longer represented the wife. He was sanctioned for the use of the confidential information he received during his representation of the wife. See also, *Annotated Rules of Professional Conduct*, 4th Ed., American Bar Association, p. 69 (1999). The use of the report in the Social Security hearing, therefore, does not relieve the lawyer from his duty to preserve the client's confidential information from disclosure.

The client's psychiatric condition does not change the result. Rule of Professional Conduct 1.14 provides that "When a client's ability to make adequately considered decisions in connection with the representation is impaired...because of mental disability..., the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship." He may, however, as he did here, consult with a medical provider for the benefit of his client where, as here, the client is incapable of consenting to the consultation. ABA Informal Opinion 89-1530 (1989).

The father has not stated a reason for requesting disclosure. The psychiatrist has opined that the

daughter is capable of managing her own affairs. The lawyer should advise the parent to seek independent counsel if he wishes to proceed further, since, “A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer’s responsibilities to another client ...” Rule of Professional Conduct 1.7(b).

The lawyer must not divulge the report to the parent under the current factual scenario.

Since this is an ethics opinion, this opinion does not address the applicability of the Illinois Doctor-Patient Privilege, 735 ILCS 5/8-802 and the Mental Health and Developmental Disability Confidentiality Act 740 ILCS 110/1 *et seq.* to the facts of this scenario. The practitioner is cautioned that both of these enactments may apply and should be reviewed and complied with under the facts of this case.

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