

Opinion No. 358 (July 21, 1976)

DISCLOSURE OF FINANCIAL INFORMATION REGARDING CLIENT ELIGIBILITY BY LEGAL AID ATTORNEY TO BOARD OF DIRECTORS. A Legal Aid attorney may not disclose confidential financial information regarding a client's eligibility to the Foundation's Board of Directors without the client's consent.

Rules interpreted:

ABA Code of Professional Responsibility,
EC 4-1, 4-2, 4-4, 4-6, DR 4-101(a),
DR 4-101(b)(1), DR 4-101(c).
Cal. Bus. & Prof. Code Sec. 6068(e)

The client of a public legal services foundation furnished financial data to a non-attorney interviewer for use in determining the client's financial eligibility for services. The information was recorded on a client in-take sheet. During the staff attorney's representation of the client, the foundation's board of directors and executive director received inquiries from the adverse party and members of the community regarding the client's financial eligibility. As a result of these inquiries, the staff initiated an additional investigation of the client's eligibility including a review of documents related to his income and assets.

The board of directors, desiring to conduct its own investigation, requested the financial data which had been supplied by the client to the foundation. The executive director felt that the specific information constituted a confidence which was protected by the attorney-client relationship between the client and the foundation and declined to furnish the information requested. The executive director stated further that he was satisfied that the client was eligible and related the procedures taken to determine the client's eligibility. The executive director also related that the client had refused to consent to disclosure. While the board of directors was attempting to obtain the information, the staff

attorney concluded his representation of the client.

We are asked whether the executive director should reveal the information requested by the board of directors.

Two interests compete in the consideration of this issue. On one side of the balance is the foundation's board of directors, pledged to formulate and enforce foundation guidelines and standards. On the other side is the foundation's staff with its executive director, pledged to safeguard conversations with clients to preserve attorney-client communication. Canon 4 of the ABA Code of Professional Responsibility prohibits a lawyer from revealing confidences or secrets of a client. "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client (DR 4-101(A)). In this inquiry, the client has requested that the information in the attorney's possession remain confidential, therefore, the requested information does qualify as a "secret" under DR 4-101(A) and cannot be revealed by the lawyer.

ABA Code EC 4-4 and DR 4-101(B)(1) and California Business and Professions Code Sec. 6068(e) indicate that the scope of the lawyer's duty to his client's confidences and secrets is very broad.

Sec. 6068(e) states: "It is the duty of an attorney:.....To maintain inviolate the confidence, and at every peril to himself to preserve the secrets, of his client." None of the exceptions listed in DR 4-101(C) apply to the facts of this inquiry.

People v. Canfield, 12 Cal.3d 699 (1974) indicates that the type of information requested by the board of directors does fall within the category of confidences or secrets which are protected. In the *Canfield* case the District Attorney attempted to obtain certain financial information from the Public Defender. The information sought was given by a Defendant to a non-attorney aide from the Public Defender's Office for the purpose of establishing eligibility. The Court, in holding the information to be privileged, stated:

"The lawyer-client privilege is, indeed, so extensive that where a person seeks the assistance of an attorney with a view to employing him professionally, any information acquired by the attorney is privileged whether or not actual employment results." (emphasis supplied)

The *Canfield* case indicates that the fact that the information is given to a non-attorney, or that it is given prior to the case being accepted, is irrelevant.

Canfield also clearly indicates that such information could not be revealed to the opposing side in litigation.

"The absence of the privilege would convert the attorney habitually and inevitably into a mere informer for the benefit of the opponent."

EC 4-4 states that the attorney's ethical considerations extend further than the attorney-client privilege and exist without regard to the nature or source of information or the fact that others share this knowledge. ABA Formal Opinion 334 (August 10, 1974) stated explicitly that:

"A legal service lawyer may not disclose confidences or secrets of a client without the knowledgeable consent of the client."

The relationship among staff attorneys of a legal aid organization corresponds to that of law partners in the same firm. Confidences may be shared and cases discussed including identities of clients. An entirely different relationship exists between staff attorneys of a legal aid organization and its governing body. As stated in Los Angeles County Bar Opinion No. 339:

"the board's functions are limited to formulating broad goals and policies pertaining to the operation of the society and **establishing guidelines** respecting categories or kinds of clients staff attorneys may handle; ...once the attorney has accepted a client or case of the nature and type sanctioned by board policy the board must take special precautions not to interfere with its attorneys' independent professional judgment in the handling."

In ABA Informal Opinion 1208 the Committee stated:

". . . the loyalty of the lawyer runs to his client and not to the governing body."

While the board of directors' interest in remaining accountable for staff actions is well founded and legitimate, that interest cannot outweigh the sanctity of the attorney-client relationship. The case law and precedent opinions make clear that the staff attorney cannot divulge his client's secrets to the Board. The privilege extends to non-attorneys who are subordinates to the attorney handling the case as well as to the attorney's partners and associates. (ABA Code EC 4-5).