

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-253
Issued: September 1981

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question 1: May a lawyer reveal the names and addresses of clients?

Answer 1: Qualified yes.

Question 2: May a lawyer reveal the credit listing of clients?

Answer 2: Qualified yes.

References: Canon 4; EC 4-2; DR 4-101(C); ABA Opinion 320; ABA Informal Opinion 1200; Hughes v. Meade, 453 S.W.2d 538 (Ky. 1970)

OPINION

The point of departure for an examination of the questions presented must be Canon 4 of the Canon of Legal Ethics. This Canon provides that, "A lawyer should preserve the confidences and secrets of a client." We must then determine whether the phrase "confidences and secrets of a client" is limited only to those things directly related to the subject of the client's case or whether it also extends to the very existence of the attorney/client relationship and the financial circumstances of that relationship.

Obviously, there are certain attorney/client relationships which, by their very nature are exposed to public knowledge. These relationships include, *inter alia*, most litigation and real estate work. In these areas it is usual that the attorney's work product is signed and placed in the public record.

Equally obviously, there are other attorney/client relationships where the client certainly expects confidentiality as to even the existence of the attorney/client relationship. These relationships include estate planning, advice about potential criminal liability for an action a client has taken, or consultations about possible bankruptcies or divorces.

In the latter circumstances, if the attorney were to ask the client whether he expected the fact of his employment of the attorney to be kept confidential, it can be safely assumed that virtually all would say yes.

The client's expectations are extremely important. The practice of law is a profession. A professional must be sensitive to a client's expectations not just "from the standpoint of good business", but also from the standpoint of ethical obligations.

Ethical Consideration 4-2 says (in part), that,

A lawyer must always be sensitive to the rights and wishes of his client and act scrupulously in making of decisions which may involve the disclosure of information obtained in his professional relationship.

We believe that a proper application of the phrase "confidences and secrets of a client" includes any information about the attorney/client relationship, including its very existence (unless, of course, the representation of the client's interest requires it). We must then examine the question of whether the disclosure of confidences and secrets can be permitted by a client's waiver.

Disciplinary Rule 4-101(C), provides that,

A lawyer may reveal: (1) Confidences or secrets with the consent of the client or clients affected, but only after a full disclosure to them.

ABA Opinion 320 (1968) provides that,

Where ... (a client) knowingly and after full disclosure participates in a (legal fee) financing plan which requires the furnishing of certain information to the bank, clearly by his conduct he has waived any privilege as to that information.

Obviously, a competent client, with full knowledge of the information to be disclosed, can consent to the disclosure of any confidence or secret, including the release of his name as a client of a specific attorney and his credit history with that attorney.

The Ethics Committee in applying the discussion above to the specific questions asked, adopts the following statements:

1. A lawyer may reveal the names and addresses of clients (a) only where that information is in the public record as a result of the attorney's representation of that client, (b) where the circumstances of the representation make it obvious that the client does not expect confidentiality as to the existence of the attorney/client relationship; or (c) where the client has specifically authorized the release of that information in writing.
2. An attorney may reveal the credit history of a client only where the client has specifically authorized the release of that information in writing.

The authorization in both instances must be sufficiently specific to allow the client to be fully aware of the intended use of the information to be revealed.

We are fully aware of ABA Informal Opinion 1200 which provides that, “ ... a lawyer may reveal the name of his client unless the client has requested that the professional relationship be held inviolate, or the disclosure would be embarrassing, or would be likely to be detrimental to the client.” We are of the opinion, however, that the client is in a better position than the attorney to determine what he considers to be embarrassing or detrimental. Therefore, we feel to have him to specifically authorize the release of information is the more proper course.

We point out, however, that if a communication is not within the scope of the professional employment of an attorney, the client cannot reasonably expect to be protected by the attorney/client privilege. See Hughes v. Meade, 453 S.W.2d 538 (Ky. 1970).

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.