Committee Opinion
November 16, 1989

LEGAL ETHICS OPINION 1300

CONFIDENTIALITY – DISCLOSURE OF CLIENT'S IDENTITY/INFORMATION: REVEALING PARTIES' NAMES AND ADDRESSES AND TRUST ACCOUNT RECORDS TO ASSIST A GOVERNMENT AGENCY.

You have indicated that your office, which is a non-profit, non-stock corporation licensed to provide legal assistance to those who are unable to pay for such services, has received an inquiry from the U.S. General Accounting Office (GAO) requesting information which you believe to be confidences and secrets of your office's clients. At the direction of several members of Congress and in order to review Legal Services Corporation grantee activities in representing migrant and seasonal farmworkers in complaints against farmers and growers, the GAO has requested your office to provide it with the names and addresses of all farmers and growers against whom your office's attorneys closed cases by: (1) negotiated settlement without litigation; (2) negotiated settlement with litigation; (3) administrative decision; or (4) court decision. The GAO has also requested copies of, or access to, your office's trust account ledgers or other records showing all funds received, held and/or disbursed as recovery for farmworkers from farmers and growers during the period in question.

You have requested that the Committee opine on the propriety of your office's provision to the GAO of names and addresses of all farmers and growers contained in your client files in the absence of client consent after full disclosure. You have asked that the Committee also opine as to the propriety of your office's provision to the GAO of copies or access to client trust account ledgers or other client records showing funds received, similarly in the absence of client consent after full disclosure.

The appropriate and controlling rules relative to your inquiry are DR:4-101(B)(1) and DR:4-101(C)(1) and (2) which provide respectively that a lawyer shall not knowingly reveal a confidence or secret of his client but may reveal such information with the consent of the client after a full disclosure to the client [of the possible implications of the revelation] or when required by law or court order. Disciplinary Rule 4-101(A) defines "confidence" as that information protected by the attorney-client privilege under applicable law, and "secret" as other information gained in the professional relationship which the client has requested to be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client. Further guidance is provided under Ethical Consideration 4-4 [EC:4-4] which states:

> The attorney-client privilege is more limited than the ethical obligation of a lawyer to guard the confidences and secrets of his client. This ethical precept, unlike the evidentiary privilege, exists without regard to the nature or source of information or the fact that others share the knowledge. The Committee has consistently held that the determination of whether a matter is a "confidence," and thereby protected by the attorney-client privilege under applicable law, is thus a question of law which is beyond the purview of this Committee.

Although the Committee has previously opined that, under ordinary circumstances, the mere disclosure of a client's identity is not improper once it has become a matter of public record, it is the view of the Committee that identifying data about a client of a legal aid office is a secret since it might be an embarrassment to the client to have it revealed that he received services from a legal aid office. (See LE Op. 1147; ABA Informal Opinions Nos. 1081 and 1287) This Committee has also opined that if an attorney believes that material, disclosure of which has been requested, is either confidential or a secret, such information may not be revealed except with the client's consent or unless subpoenaed and compelled to by a court after the subpoena is questioned by the attorney in court. (See LE Op. 334, LE Op. 787, LE Op. 967) Finally, the Committee has also opined that the lawyer's preservation of a client's confidences and secrets survives the representation. (See LE Op. 812, LE Op. 1207, LE Op. 1307)

The first question you have raised indicates that the GAO request does not explicitly require that your office divulge client identity information. Rather, the GAO has requested names and addresses of all parties adverse to your clients, which names are contained in your client files. The Committee believes the disclosure of adverse parties' names and addresses implicitly involves the disclosure of legal aid clients' identities which, as noted above, are construed to be secret. The Committee is of the opinion that the information requested may be so construed since it was gained in the professional relationship, is contained in the client files, and its disclosure might be embarrassing or likely to be detrimental to the client. Therefore, the disclosure of adverse parties' identities would be improper absent client consent after full disclosure. (See also ABA Formal Opinion No. 334) Furthermore, even were a similar request to be made of non-legal aid law firms, at least two of the categories for which the GAO has requested identities of adverse parties would not be construed as previously having been made public: (1) clients whose cases were closed through negotiated settlement without litigation and (2) clients whose cases were closed through administrative decision. Therefore, disclosure of information as to those clients or their adverse parties would be improper whether made by a legal aid office or private lawyer or law firm.

In the view of the Committee, similar protections are afforded to client trust account ledgers or other client records showing funds received, held, and/or disbursed by your legal aid office. Thus, the Committee believes it would be improper to provide copies of or access to such ledgers or records absent either client consent or a mandate by law or court order. (See New Hampshire Bar Association Ethics Committee Opinion No. 1988-9/13 (2/16/89). See also, ABA Informal Opinion No. 1443.) However, as to the legal privilege attaching to client trust accounts, the Committee also directs your attention to *Lesh v. U.S.*, 715 F. Supp. 1333 (E.D. Va. 1989) which found that no attorney-client privilege attaches to bank records maintained by an attorney for his clients and that “[t]he fact that bank records derive from transactions involving an attorney's client trust account does not cloak those records with any special protection.” *Lesh*, 715 F. Supp. 1333 at 1335.