

Committee Opinion  
February 7, 1995

LEGAL ETHICS OPINION 1628

CONFIDENCES; ATTORNEY  
PROVIDING INFORMATION FROM  
MENTALLY HANDICAPPED CLIENT'S  
FILE TO FEDERAL ADMINISTRATIVE  
AUTHORITIES.

You have presented a hypothetical situation in which Daughter requested that Counsel represent Client/Mother in Client's claim to federal cash and medical assistance pending in a federal administrative department. Counsel obtained copies of pre-existing documentary evidence and hired private consultants, a medical doctor and a psychologist, to examine and evaluate Client and to report to Counsel. You indicate that the consultant's reports were proffered to the appropriate federal administrative department personnel. A federal administrative employee subsequently demands copies of summary letters sent by Counsel to the private consultants. You further advise that these letters contain confidences and secrets of the client.

You advise that Client is mildly mentally retarded and Counsel questions whether Client has the capacity to waive the attorney-client privilege.

You have asked the committee to opine whether, under the facts of the inquiry, Counsel must disclose the factual summary letters sent to the private consultants preliminary to their evaluations.

The appropriate and controlling Disciplinary Rule related to your inquiry is DR:4-101, which provides for the preservation of client confidences and secrets.

The committee is of the opinion that the factual summaries sent by Counsel to the private consultants contain confidential information learned within the attorney-client relationship. Therefore, the committee opines that it would be improper for Counsel to voluntarily disclose the information requested by the federal administrative employee. However, as permitted by DR:4-101(C)(2), Counsel may provide the documents in question in response to a court order. The Committee believes that it is incumbent upon Counsel to move to quash any subpoena issued for the information in an effort to continue to protect the Client's confidentiality. Should the motion be denied, with the court ordering Counsel to disclose the information, Counsel would then be permitted to do so in response to the Order. *See* LE Op. 300, LE Op. 334, LE Op. 645, LE Op. 967.

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