

LEGAL ETHICS OPINION 1757

CONFLICTS: PROVISION OF CLIENT LIST
FROM LEGAL AID OFFICE TO ANOTHER
LEGAL AID OFFICE WHEN ATTORNEYS
CHANGE OFFICES.

You have presented a hypothetical situation in which Legal Aid Society A employed attorneys W, X, Y and Z and served a seven-county area. Legal Aid Society B served an adjoining six-county area. Funding has been diverted to Legal Aid Society B to allow them to also provide services to the seven-county area served by Legal Aid Society A. While employed at Legal Aid Society A attorneys Y and Z managed the intake system and thereby gave advice to or approved the advice given to thousands of low income people. Subsequently, attorneys X, Y and Z become employees of Legal Aid Society B, providing services to individuals in the seven-county area.

Under the facts you have presented, you have asked the committee to opine as to whether Legal Aid Society A must provide confidential client information to Legal Aid Society B to assist Legal Aid Society B in avoiding conflicts of interest. Also, if Legal Aid Society A must provide the client information to Legal Aid Society B, you ask whether Legal Aid Society A must specifically provide: a) client name; b) client address; c) client social security number; d) client date of birth; e) date of initial client contact; f) date case was closed; g) type of case; and h) disposition of case; and whether information provided must be on paper or can be an electronic data base of client records.

The appropriate and controlling disciplinary rules relative to your inquiry are:

RULE 1.3— Diligence

(c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

RULE 1.6 — Confidentiality of Information

(a) A lawyer shall not reveal information protected by the attorney-client privilege under applicable law or 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 unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

RULE 1.16 — Declining Or Terminating Representation

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

The underlying relevant issue deals with the core value of protecting client interests. When a lawyer ceases to practice at a law firm, both the departing lawyer and the members of the firm who remain have ethical responsibilities to clients. The two main responsibilities deal with

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maintaining and protecting client confidentiality and avoiding conflicts of interest in their new affiliation.

This committee is of the opinion that the possession of confidential information gained in either the representation of or the intake process of the thousands of low income clients is imputed to attorneys X, Y or Z, based upon their having reviewed intake files, and having either personally imparted legal advice or approved the legal advice given. This committee has previously opined that it is irrelevant whether or not the attorneys actually remember such information; the information is imputed to them and was dispensed by the client with an expectation of confidentiality. Furthermore, it is irrelevant whether or not an attorney-client relationship ensued. When a person imparts information to a lawyer or law firm with the possibility of employing them, this creates an expectation of confidentiality and that information is therefore protected under Rule 1.6. This confidential information is important in the present instance in that it must be considered by attorneys X, Y and Z for client protection when evaluating subsequent conflicts. *See* LEOs 1146 [LE Op. 1146], 1453 [LE Op. 1453], and 1546 [LE Op. 1546].

As to Legal Aid Society A disclosing such information to attorneys X, Y and Z, this committee has previously opined that if access to office and files of clients was being denied this may indeed be a violation of DR 2-108 [DR:2-108] (D) (now Rule 1.16(d)) if a finder of fact were to determine that the intention was to preclude access to client files or information by the withdrawing attorney. *See* LEO 1506 [LE Op. 1506]. Since the information is already imputed to attorneys X, Y and Z, and they are now in Legal Aid Society B, Legal Aid Society A may properly provide attorneys X, Y and Z with confidential information sufficient to enable attorneys X, Y, and Z to perform conflicts checks. It is only through the sharing of the actual information by Legal Aid Society A to attorneys X, Y and Z that client interests and confidences can, through conflicts avoidance, ultimately be protected.

The question of the form in which such information should be provided is one of convenience and should be resolved between Legal Aid Society A and Legal Aid Society B based upon the easiest transmission of this information and protection of the ultimate core value of clients' interests.