

ADVISORY ETHICS OPINION 97-01

SYNOPSIS:

When a trade association employs attorneys to provide legal services to its corporate members, the attorneys so employed may inform non-lawyer employees of the trade association of the details of such services rendered to officials of a corporate member if the governing body of the corporate member waives the ethical requirement of confidentiality.

FACTS:

A trade association, organized as an unincorporated association, employs two attorneys to provide legal advice to its corporate members. The two attorneys operate as a division of the trade association denominated as its "law center". The particular trade association involved in the inquiry is composed of municipal corporations.

The two lawyers and their support staff are salaried employees of the trade association. To fund the operation of the law center, the trade association uses dues collected from its members and collects fees for certain forms of legal service other than telephone inquiries.

The ground rules for operation of the law center permit requests for legal advice to be entertained from any elected or appointed official of a member on matters within his or her official responsibilities, but specify that the client is always and only the corporate member served by the official.

QUESTION:

The two attorneys manning the law center seek our advice as to whether and how the corporate members of the trade association may waive the confidentiality of legal advice provided by the law center to their officials so that detailed information concerning each advice may be divulged to employees of the trade association who are not on the staff of the law center.

DISCUSSION:

Preservation of the confidences and secrets of a client is presently governed by Canon 4 of the Vermont Code of Professional Responsibility and the disciplinary rules thereunder. DR 4-101(C)(1) permits a lawyer to reveal the confidences or secrets of a client with the consent of the client or clients affected, but only after a full disclosure to them. Rule 1.6 of the proposed Vermont Rules of Professional Conduct provides that "[a] lawyer shall not reveal information relating to representation of a client unless the client consents after consultation..." Whichever requirement will be applicable in the near future, the consent of a client clearly is required for revelation outside of a law firm of detailed information relating to representation of the client.

In the particular situation under consideration, the law firm is the law center of the trade association, not the entire staff of the trade association.

An attorney-client relationship exists when an official of a corporate member seeks legal advice from the law center, whether the advice is to be given orally or in writing. In the particular situation under consideration, a substantial portion of the legal advice is given in telephone inquiries. The confidential relationship of attorney and client even extends to inquiries from an official of a corporate member as to whether the law center would be available to render legal advice in regard to particular circumstances.¹

In the particular situation under consideration, it is clear that the law center has no clients other than the corporate members of the trade association. The user's guide, hitherto circulated by the trade association to its corporate members and their officials, states:

WHO IS OUR CLIENT? First and foremost, when one of us in the Law Center is answering an inquiry from a local official, our client is *the municipality as a corporate entity*. The client is not the individual who is calling, even in his or her official capacity.

¹ See EC 4-1 and Opinion 96-11.

If this language or equivalent language does not remain a portion of the ground rules for operation of the law center of the trade association, the individual officials of a member may become additional clients when they use the services of the law center.

CONCLUSION:

Rule 1.13 of the proposed Vermont Rules of Professional Responsibility make clear, as a matter of professional ethics, that a lawyer representing an organization, whether private or governmental, may confine his or her representation to the organization itself. The Reporter's Note recognizes that there is no counterpart in the Vermont Code of Professional Responsibility.

In the particular situation under consideration, it is also clear that the lawyers in the law center are not attorneys for the association. They are employed exclusively for the purpose of rendering legal services to the corporate members, and the trade association uses an outside law firm for legal services to the trade association.

It follows from the identification of the clients of the law center that the governing body of each corporate member is entitled to information concerning legal advice given by the law center to its officials and that the governing body of each corporate member has the authority to waive the requirement of confidentiality attaching to legal services rendered by the law center to its officials.

The seriousness of a waiver of the confidentiality normally attaching to the relationship of attorney and client warrants circumspection in the drafting of the form of the waiver. The waiver should be in writing. Execution on behalf of a corporate member must be duly authorized by its governing body. The waiver must be addressed to the attorneys who staff the law center. The waiver should specify the scope of the information to which it applies and to whom and how the information may be conveyed. If the waiver is a blanket waiver as to any and all information, then it would be desirable for the waiver to specify the categories of information which are covered so that there cannot be a misunderstanding.

The waiver also should specify as part of the scope of its application the officials of the corporate member whose legal advice from the law center is within the waiver. The fact that a particular official derives authority in whole in part from a statute rather than the governing body does not stop the corporate member, as the client, from giving a waiver of confidentiality to the law center.

It would be unwise to include in the waiver any statement of the purposes for which the recipient may use the information released pursuant to the waiver. In the particular situation under consideration, the proposed waiver will apply to providing information to certain employees of the trade association outside of the law center. The corporate members may wish to have some agreement with the trade association as to what use those employees may make of the information released pursuant to the waiver.

As a further protection of the lawyers who staff the law center, it would be wise to include in the waiver a statement absolving them of any responsibility for how the persons to whom information is released pursuant to the waiver use the released information.