

ADVISORY ETHICS OPINION 93-07

SYNOPSIS:

An attorney may not disclose to a former client or to a tribunal a confidence or secret gained in the course of a professional relationship with other clients where disclosure would be embarrassing or likely to be detrimental to the other clients.

FACTS:

Attorney successfully settled a matter on behalf of Client A (mother and guardian) and Client C (minor child). Client A was appointed legal guardian and deposited the settlement proceeds from Client C's claim in a passbook account. The passbook was filed with the Probate Court to avoid the need for Client A to post a bond. Client A was to supervise Client C's funds and handle probate/guardianship annual accountings, and attorney's services with A and C were concluded. Eight years later, Client A and Client B (husband of A and father of C) consult with attorney on bankruptcy matters. In the course of these discussions, A and B independently disclose to attorney that they pledged the ward's funds in the guardianship account as collateral for a loan to someone other than the ward at the same bank where the passbook account was set up. The loan went into default and the bank applied the entire balance of the passbook account toward the amount due on the loan. Based upon this information, attorney terminates the lawyer/client relation with both A and B, and new counsel is obtained to handle the remainder of the bankruptcy proceedings. C is now fifteen years old and has not contacted attorney for ten years and is further unlikely to initiate contact with attorney. C is unaware of the loss of guardianship funds. Client B has assured attorney that despite the bankruptcy he will restore to Client C the funds that have been intercepted by their creditor.

QUESTION:

Attorney inquires to what extent, if at all, he should communicate this information to Client C and whether this communication could take place without the consent of A and B. Implicit in this request is whether attorney owes a duty of disclosure to the supervising Probate Court.

DISCUSSION:

DR 4-101(A) and (B) states as follows:

- “(A) ‘Confidence’ refers to information protected by the attorney-client privilege under applicable law, and ‘secret’ refers to other information gained in the professional relationship that 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.
- (B) Except when permitted under DR 4-101(C), a lawyer shall not knowingly:
 - (1) Reveal a confidence or secret of his client.
 - (2) Use a confidence or secret of this client to the disadvantage of the client.
 - (3) Use a confidence or secret of his client for the advantage of himself or of a third person, unless the client consents after full disclosure.”

Under certain circumstances, an attorney is permitted to disclose confidences or secrets as follows:

- “(1) Confidence or secrets with the consent of the client or clients affected, but only after a full disclosure to them.
- (2) Confidences or secrets when permitted under Disciplinary Rules or required by law or court order.
- (3) The intention of his client to commit a crime and the information necessary to prevent the crime.
- (4) Confidences or secrets necessary to establish or collect his fee or to defend himself or his employees or associates against an accusation of wrongful client.”

The information gained by attorney regarding the funds of Client C, in the course of the bankruptcy proceeding of A and B, is both a confidence and a secret of Client A and Client B gained in the professional relation.

Because the misappropriation of the funds does not constitute an “intent to commit a crime” under DR 4-101(B)(3), the misappropriation already having occurred, it cannot be disclosed without consent of Client A and Client B. Attorney A can contact C only if, after full disclosure to Clients A and B, they have consented. It is assumed that the Probate Court has no knowledge of this financial loss. The lawyer may be required to reveal this information if ordered by the Probate Court pursuant to DR 4-101(C)(2), particularly if the attorney participated in the filing of any annual reports on the status of the guardianship account. If attorney is approached by minor Client C, attorney must decline representation in any matter having to do with the guardianship or the funds, and the attorney may make no disclosure, preserving for Clients A and B the secret and confidence gained in the course of the lawyer/client relation. Attorney is precluded from representing Clients A, B or C in any further proceeding relating to the funds or the guardianship.