
E-85-10 Confidences and secrets of a client

Facts

During the course of representing a client on a charge of indecent exposure, a lawyer learned of certain allegations of sexual misconduct and almost identical complaints of indecent exposure against the client. This information was obtained as a consequence of defending the client and from sources generally open to the public. Virtually none of the information was obtained as confidential communication with the client. The charges against the client were brought in County X. The client is employed by a public agency located in County Y and is in frequent contact with the public and with youth age employees. The personnel officials in County Y are unaware of the allegations and charges against the client. The lawyer also occasionally represents County Y in personnel matters.

Question

Is the information concerning the allegations and charges against the client information which the lawyer is required to keep confidential?

Opinion

Wisconsin Supreme Court Rule (hereinafter SCR) 20.22 requires a lawyer to preserve the confidences and secrets of a client. The principle of confidentiality is given effect in two bodies of law, the attorney-client privilege and the rule of confidentiality established in professional ethics. ABA Model Rule of Professional Conduct (hereinafter MRPC) 1.6 (comment). This opinion will address the latter.

The scope of information that must be kept confidential under the confidentiality rule is that information relating to the representation of a client, MRPC 1.6(a).

Under this rule, a client is not required to indicate that certain information is to be held confidential. MRPC 1.6 (comment). It “exists without regard to the nature or source of the information or the fact that others share the knowl-

edge.” SCR 20.21(4). Furthermore, a lawyer “should not use information acquired in the course of the representation of a client to the disadvantage of the client.” SCR 20.21(5).

The confidentiality rule is subject to limited exceptions. *See* SCR 20.22. Under SCR 20.22(2)(c), a lawyer may reveal the intention of a client to commit a crime and the information necessary to prevent the crime. *See* Memorandum Opinion 8/76B, 57 Wis. Bar Bull. 100 (June 1984). This exception only applies to future commissions of unlawful acts and not to crimes already committed. *See* ABA Formal Opinion 202 (May 25, 1940).

Accordingly, in the present situation, the lawyer would be required to keep confidential all information relating to the representation of the client and information acquired in the course of the representation that could be used to the disadvantage of the client. A lawyer may not use a confidence or secret of a client for the advantage of a third person unless the client consents after full disclosure.