



June 13, 2014

Mr. Reginald Haley
Office of Program Performance
Legal Services Corporation
3333 K Street NW
Washington, DC 20007

Re: Comments on Proposed Revision to 2015 Grant Assurances Nos. 10 and 11

Dear Mr. Haley:

I am writing on behalf of Community Legal Services of Mid-Florida to submit the following comments regarding the proposed changes to 2015's Grant Assurances Numbers 10 and 11 that came about as a result of *United States v. California Rural Legal Assistance, Inc.*, 722 F.3d 424 (D.C. Cir. 2013) and *United States v. California Rural Legal Assistance, Inc.*, 824 F. Supp. 2d 31 (D.D.C. 2011). We believe these changes should not be enacted, and Grant Assurances 10 and 11 should remain as they are currently written.

Under the current grant assurances, attorneys can withhold client information and records from disclosure to LSC if applicable law or rules so requires; this includes state and local laws. The proposed changes, however, would extend the protection only to records protected under federal law. This policy would conflict with the LSC Act, which reads in part:

The Corporation shall not, under any provision of this title, interfere with any attorney in carrying out his professional responsibilities to his client as established in the Canons of Ethics and the Code of Professional Responsibility of the American Bar Association . . . or abrogate as to attorneys in programs assisted under this title the authority of a State or other jurisdiction to enforce the standards of professional responsibility generally applicable to attorneys in such jurisdiction. *The Corporation shall ensure that activities under this title are carried out in a manner consistent with attorneys' professional responsibilities.*

42 U.S.C. § 2996e(b)(3) (2014) (emphasis added). The LSC Act therefore acknowledges that LSC cannot require the disclosure of confidential information if doing so would conflict with an attorney's duties under the rules of professional responsibility. Both the LSC Act and the D.C. Circuit Court in *California Rural Legal Assistance, Inc.*, 722 F.3d 424, however, are silent on the fact that the American Bar Association's Code of Professional Conduct is only a model code and is not used in any jurisdiction. Each state adopts its own Code of Professional Conduct, and in

federal proceedings, the Code of the state in which the tribunal is located governs. A provision in a state's Code might differ from the ABA's Model Code, and an attorney can be disciplined for violations of the state Code even if the action would be permissible under the ABA's Model Code.

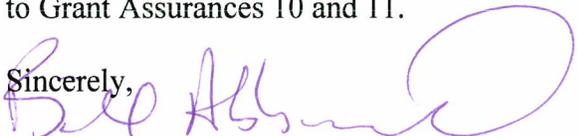
Unlike the ABA's Model Code, in Florida, Rule 1.6 of the Rules of Professional Conduct do not provide an exception for "other law." *See* R. Regulating Fla. Bar 4-1.6. It should be noted that the comments to Rule 1.6, mention "required . . . by law" as providing an exception, along with the Rules Regulating the Florida Bar. *See* R. Regulating Fla. Bar 4-1.6, comment 5. Given that "required . . . by law" is not mentioned in the actual rule, however, it is not clear that an attorney releasing client information to LSC, without consent from the client, would not be subject to discipline from the Florida Bar. Furthermore comment 21 states that "a lawyer may be obligated or permitted by other provisions of law to give information about a client. *See* R. Regulating Fla. Bar 4-1.6, comment 21. Whether another provision of law supersedes rule 4-1.6 is a matter of interpretation beyond the scope of these rules, but *a presumption should exist against such a supersession.*" R. Regulating Fla. Bar 4-1.6, comment 21 (emphasis added).

Despite the finding of *California Rural Legal Assistance, Inc.*, 722 F.3d 424, to require an attorney to release client information based solely on federal law would abrogate a state's authority to enforce its Code of Professional Responsibility. If an attorney is required to breach confidentiality to comply with LSC requirements, then the state is unable to enforce its professional responsibility rules. The proposed grant assurances do just this and create an impossible situation for legal services attorneys. As written and implemented if a legal services grantee attorney does not comply with LSC's requests for information, the grantee will be subjected to lose its LSC funding and be unable to provide services to those in need. If the grantee attorney's do comply with the requests for information, they risk being disciplined by their state bar for breach of confidentiality.

Additionally, under Florida law, when a tribunal requires disclosure, an attorney "may first exhaust all appellate remedies." *See* R. Regulating Fla. Bar 4-1.6(d). Under Florida law attorneys have a right to seek judicial review of an order requiring disclosure of confidential information, before being required to release the information. To not allow them this step would violate this right.

Finally, the purpose of Florida Rule of Professional Conduct 1.6 is to encourage clients to share information openly with their attorneys. A client who fears information might be revealed is less likely to divulge potentially prejudicial information. Attorneys, however, often need this information to effectively counsel and represent their client. Requiring attorneys to disclose confidential information would impact the representation provided and result in low income individuals potentially receiving inferior representation as compared to that of clients who are able to pay for legal counsel. For these reasons, we urge LSC not to enact the proposed changes to Grant Assurances 10 and 11.

Sincerely,


William Abbuehl

Fla. Bar Reg. R. 4-1.6

Rules current through changes received by May 9, 2014. Annotations current through May 27, 2014

Florida Rules of Court > Rules Regulating The Florida Bar > Chapter 4. Rules of Professional Conduct >
4-1. CLIENT-LAWYER RELATIONSHIP

Rule 4-1.6. Confidentiality of Information [Effective until June 1, 2014.]

- (a) *Consent Required to Reveal Information.* --A lawyer shall not reveal information relating to representation of a client except as stated in subdivisions (b), (c), and (d), unless the client gives informed consent.
- (b) *When Lawyer Must Reveal Information.* --A lawyer shall reveal such information to the extent the lawyer reasonably believes necessary:
 - (1) to prevent a client from committing a crime; or
 - (2) to prevent a death or substantial bodily harm to another.
- (c) *When Lawyer May Reveal Information.* --A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:
 - (1) to serve the client's interest unless it is information the client specifically requires not to be disclosed;
 - (2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and client;
 - (3) to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved;
 - (4) to respond to allegations in any proceeding concerning the lawyer's representation of the client; or
 - (5) to comply with the Rules of Professional Conduct.
- (d) *Exhaustion of Appellate Remedies.* --When required by a tribunal to reveal such information, a lawyer may first exhaust all appellate remedies.
- (e) *Limitation on Amount of Disclosure.* --When disclosure is mandated or permitted, the lawyer shall disclose no more information than is required to meet the requirements or accomplish the purposes of this rule.

History

Amended eff. March 23, 2006 (933 So.2d 417); Oct. 1, 2011 (2011 Fla. Lexis 1576)

Annotations

Commentary

COMMENT

The lawyer is part of a judicial system charged with upholding the law. One of the lawyer's functions is to advise clients so that they avoid any violation of the law in the proper exercise of their rights.

This rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See rule4-1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, rule4-1.9(c) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client, and rules4-1.8(b) and 4-1.9(b) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See terminology for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

The principle of confidentiality is given effect in 2 related bodies of law, the attorney-client privilege (which includes the work product doctrine) in the law of evidence and the rule of confidentiality established in professional ethics. The attorney-client privilege applies in judicial and other proceedings in which a lawyer may be called as a

witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or by law. However, none of the foregoing limits the requirement of disclosure in subdivision (b). This disclosure is required to prevent a lawyer from becoming an unwitting accomplice in the fraudulent acts of a client. See also Scope.

The requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance.

Authorized disclosure

A lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation, except to the extent that the client's instructions or special circumstances limit that authority. In litigation, for example, a lawyer may disclose information by admitting a fact that cannot properly be disputed or in negotiation by making a disclosure that facilitates a satisfactory conclusion.

Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure adverse to client

The confidentiality rule is subject to limited exceptions. In becoming privy to information about a client, a lawyer may foresee that the client intends serious harm to another person. However, to the extent a lawyer is required or permitted to disclose a client's purposes, the client will be inhibited from revealing facts that would enable the lawyer to counsel against a wrongful course of action. While the public may be protected if full and open communication by the client is encouraged, several situations must be distinguished.

First, the lawyer may not counsel or assist a client in conduct that is criminal or fraudulent. See rule4-1.2(d). Similarly, a lawyer has a duty under rule4-3.3(a)(4) not to use false evidence. This duty is essentially a special instance of the duty prescribed in rule4-1.2(d) to avoid assisting a client in criminal or fraudulent conduct.

Second, the lawyer may have been innocently involved in past conduct by the client that was criminal or fraudulent. In such a situation the lawyer has not violated rule4-1.2(d), because to "counsel or assist" criminal or fraudulent conduct requires knowing that the conduct is of that character.

Third, the lawyer may learn that a client intends prospective conduct that is criminal. As stated in subdivision (b)(1), the lawyer shall reveal information in order to prevent such consequences. It is admittedly difficult for a lawyer to "know" when the criminal intent will actually be carried out, for the client may have a change of mind.

Subdivision (b)(2) contemplates past acts on the part of a client that may result in present or future consequences that may be avoided by disclosure of otherwise confidential communications. Rule4-1.6(b)(2) would now require the attorney to disclose information reasonably necessary to prevent the future death or substantial bodily harm to another, even though the act of the client has been completed.

The lawyer's exercise of discretion requires consideration of such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction, and factors that may extenuate the conduct in question. Where practical the lawyer should seek to persuade the client to take suitable action. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to the purpose.

Withdrawal

If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in rule4-1.16(a)(1).

After withdrawal the lawyer is required to refrain from making disclosure of the client's confidences, except as otherwise provided in rule4-1.6. Neither this rule nor rule4-1.8(b) nor rule4-1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like.

Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with the rule, the lawyer may make inquiry within the organization as indicated in rule4-1.13(b).

Dispute concerning lawyer's conduct

A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, subdivision (b)(5) permits such disclosure because of the importance of a lawyer's compliance

with the **Rules of Professional Conduct**.

Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's **conduct** or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the **conduct** or representation of a former client. The lawyer's right to respond arises when an assertion of such complicity has been made. Subdivision (c) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend, of course, applies where a proceeding has been commenced. Where practicable and not prejudicial to the lawyer's ability to establish the defense, the lawyer should advise the client of the third party's assertion and request that the client respond appropriately. In any event, disclosure should be no greater than the lawyer reasonably believes is necessary to vindicate innocence, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it, and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

If the lawyer is charged with wrongdoing in which the client's **conduct** is implicated, the **rule** of confidentiality should not prevent the lawyer from defending against the charge. Such a charge can arise in a civil, criminal, or **professional** disciplinary proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person; for example, a person claiming to have been defrauded by the lawyer and client acting together. A lawyer entitled to a fee is permitted by subdivision (c) to prove the services rendered in an action to collect it. This aspect of the **rule** expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary. As stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure.

Disclosures otherwise required or authorized

The attorney-client privilege is differently defined in various jurisdictions. If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, **rule4-1.6(a)** requires the lawyer to invoke the privilege when it is applicable. The lawyer must comply with the final orders of a court or other tribunal of competent jurisdiction requiring the lawyer to give information about the client.

The **Rules of Professional Conduct** in various circumstances permit or require a lawyer to disclose information relating to the representation. See **rules4-2.3**, **4-3.3**, and **4-4.1**. In addition to these provisions, a lawyer may be obligated or permitted by other provisions of law to give information about a client. Whether another provision of law supersedes **rule4-1.6** is a matter of interpretation beyond the scope of these **rules**, but a presumption should exist against such a supersession.

Former client

The duty of confidentiality continues after the client-lawyer relationship has terminated. See **rule4-1.9** for the prohibition against using such information to the disadvantage of the former client.

<p>Case Notes</p>

Civil Procedure: Class Actions: Class Counsel: General Overview
 Civil Procedure: Counsel: Disqualifications
 Civil Procedure: Discovery: Privileged Matters: General Overview
 Civil Procedure: Appeals: Appellate Jurisdiction: State Court Review
 Criminal Law & Procedure: Counsel: Substitution & Withdrawal
 Evidence: Privileges: Attorney-Client Privilege: General Overview
 Evidence: Privileges: Attorney-Client Privilege: Exceptions
 Evidence: Privileges: Attorney-Client Privilege: Scope
 Evidence: Privileges: Attorney-Client Privilege: Waiver
 Family Law: Delinquency & Dependency: Dependency Proceedings
 Legal Ethics: Client Relations: Confidentiality of Information
 Legal Ethics: Client Relations: Conflicts of Interest
 Legal Ethics: Client Relations: Effective Representation
 Legal Ethics: Sanctions: Suspensions
 Torts: Malpractice & **Professional** Liability: Attorneys

LexisNexis (R) Notes

Civil Procedure: Class Actions: Class Counsel: General Overview

1. Trial court erred in disqualifying the attorneys for petitioner class members; petitioners' right to be represented by attorneys of their choice outweighed any prejudice to the objector class members, since the attorneys' limited interaction with the objectors and their counsel would have resulted in little access to confidential information. Broin v. Phillip Morris Cos., 84 So. 3d 1107, 2012 Fla. App. LEXIS 4357, 37 Fla. L. Weekly D 702 (Fla. Dist. Ct. App. 3d Dist. 2012), quashed by 2014 Fla. LEXIS 1029, 39 Fla. L. Weekly S 165 (Fla. Mar. 27, 2014).

Civil Procedure: Counsel: Disqualifications

2. Granting of a petition for certiorari was proper because obtaining confidential client information, switching sides in an ongoing lawsuit, and then filing a legal response against the former client over its objections, was worthy of the strongest protection of the abandoned client's interests. Therefore, it was incumbent on the trial court to disqualify the attorney and his new law firm from the entire lawsuit, and not only to further issues at the trial level regarding the trial in the case. Rombola v. Botchey, 2014 Fla. App. LEXIS 1374, 39 Fla. L. Weekly D 263 (Fla. Dist. Ct. App. 1st Dist. Feb. 4 2014).

3. Clients' motion to disqualify a lawyer's counsel in the clients' legal malpractice case was properly denied because, among other things, although the clients argued that the representation of the lawyer in the underlying case would give the lawyer's counsel access to confidential, attorney-client privileged information that he would then be able to use in those other unrelated cases against the clients, any claim that the lawyer had disclosed confidential information to his own attorney that would breach R. Regulating Fla. Bar 4-1.6 was unfounded; the clients waived their right to attorney confidentiality because they leveled a claim against their former attorney for legal malpractice.. Miccosukee Tribe of Indians v. Lehtinen, 114 So. 3d 329, 2013 Fla. App. LEXIS 7820, 38 Fla. L. Weekly D 1086 (Fla. Dist. Ct. App. 3d Dist. 2013).

4. Bank's counsel was disqualified from representing the bank in an action on a personal guaranty because the bank's counsel also represented the personal guarantor's former lawyer in a legal malpractice action and thus had access to confidential communications between the guarantor and the guarantor's former lawyer. Frye v. Ironstone Bank, 69 So. 3d 1046, 2011 Fla. App. LEXIS 14850, 36 Fla. L. Weekly D 2078 (Fla. Dist. Ct. App. 2d Dist. 2011).

5. Trial court erred in disqualifying counsel for the insurer in its action against insureds because the case did not involve circumstances where counsel either disclosed confidences learned from representing the insureds in prior litigation or switched sides in violation of R. Regulating Fla. Bar 4-1.6 and 4-1.9. Cont'l Cas. Co. v. Przewoznik, 55 So. 3d 690, 2011 Fla. App. LEXIS 2645, 36 Fla. L. Weekly D 453 (Fla. Dist. Ct. App. 3d Dist. 2011).

6. Because an attorney representing the estate which was suing a nursing home was never sworn at a hearing regarding the disqualification of a law firm representing the nursing home, and thus, his representations did not qualify as testimony, and the representative's motion to disqualify the law firm was unsworn, there was no evidence as to the actual knowledge of the former partner on which to disqualify the firm. Bon Secours-Maria Manor Nursing Care Ctr. v. Seaman, 959 So. 2d 774, 2007 Fla. App. LEXIS 9283, 32 Fla. L. Weekly D 1488 (Fla. Dist. Ct. App. 2d Dist. 2007).

Civil Procedure: Discovery: Privileged Matters: General Overview

7. Where a brother's threat to kill his sister, communicated to his attorney, was an extraneous statement and not a communication incident or necessary to obtaining legal advice, the attorney-client privilege did not prohibit discovery through interrogatories seeking information surrounding the alleged threat. . Hodgson Russ, LLP v. Trube, 867 So. 2d 1246, 2004 Fla. App. LEXIS 3310, 29 Fla. L. Weekly D 656 (Fla. Dist. Ct. App. 4th Dist. 2004).

Civil Procedure: Appeals: Appellate Jurisdiction: State Court Review

8. Because conflicting evidence created a dispute which required the trial court to determine whether a conflict of interest existed which prohibited a challenged attorney from representing a minor and her parents in their medical malpractice action, as it was alleged that he acquired protected information protected by R. Regulating Fla. Bar 4-1.6 and R. Regulating Fla. Bar 4-1.9(b), and because the trial court applied R. Regulating Fla. Bar 4-1.9 rather than R. Regulating Fla. Bar 4-1.10(b) in disqualifying the attorney, the minor and her parents were granted certiorari relief from the order disqualifying their attorney, the disqualification order was quashed, and the matter was remanded for a determination of the motion to disqualify under R. Regulating Fla. Bar 4-1.10. Solomon v. Dickison, 2005 Fla. App. LEXIS 15989, 30 Fla. L. Weekly D 2363 (Fla. Dist. Ct. App. 1st Dist. Oct. 6 2005).

Criminal Law & Procedure: Counsel: Substitution & Withdrawal

9. Defendant's court-appointed counsel was not required to withdraw from representing defendant, who had filed a malpractice complaint against the attorney, because the trial court deemed defendant's claim of ineffective assistance of counsel to be frivolous and the trial court ordered the attorney to continue to represent defendant. *Boudreau v. Carlisle*, 549 So. 2d 1073, 1989 Fla. App. LEXIS 5132, 14 Fla. L. Weekly 2242 (Fla. Dist. Ct. App. 4th Dist. 1989).

Evidence: Privileges: Attorney-Client Privilege: General Overview

10. Grant of certiorari review in favor of a client and quashing of an order in favor of an attorney authorizing certain depositions that the attorney maintained he needed to prove his case was proper where the client's waiver of the attorney-client privilege was limited to the malpractice action and the attorney could reveal confidential information relating to his representation only to the extent necessary to defend himself. *Ferrari v. Vining*, 744 So. 2d 480, 1999 Fla. App. LEXIS 12213, 24 Fla. L. Weekly D 2118 (Fla. Dist. Ct. App. 3d Dist. 1999).

Evidence: Privileges: Attorney-Client Privilege: Exceptions

11. In a dependency case, attorneys ad litem were improperly ordered to disclose the whereabouts of a minor client, who had the privilege to refuse to disclose such under *Fla. Stat. § 90.502*; the attorneys did not believe that the disclosure was necessary to prevent the client's commission of a crime or to prevent death or substantial bodily harm to another. The appellate court declined to find a "dependency exception." *R.L.R. v. State*, 116 So. 3d 570, 2013 Fla. App. LEXIS 9688, 38 Fla. L. Weekly D 1372 (Fla. Dist. Ct. App. 3d Dist. 2013).

Evidence: Privileges: Attorney-Client Privilege: Scope

12. Attorney-client privilege did not cover a document that was prepared for the intended purpose of conveying information to an entity that was not a party to an adversary proceeding but instead, was a party in a state court action. Even if the document was protected, the privilege was waived by disclosure. *Stettin v. Gibraltar Private Bank & Trust Co. (In re Rothstein Rosenfeldt Adler, P.A.)*, 2011 Bankr. LEXIS 5005 (Bankr. S.D. Fla. June 7 2011).

Evidence: Privileges: Attorney-Client Privilege: Waiver

13. Attorney-client privilege did not cover a document that was prepared for the intended purpose of conveying information to an entity that was not a party to an adversary proceeding but instead, was a party in a state court action. Even if the document was protected, the privilege was waived by disclosure. *Stettin v. Gibraltar Private Bank & Trust Co. (In re Rothstein Rosenfeldt Adler, P.A.)*, 2011 Bankr. LEXIS 5005 (Bankr. S.D. Fla. June 7 2011).

Family Law: Delinquency & Dependency: Dependency Proceedings

14. In a dependency case, attorneys ad litem were improperly ordered to disclose the whereabouts of a minor client, who had the privilege to refuse to disclose such under *Fla. Stat. § 90.502*; the attorneys did not believe that the disclosure was necessary to prevent the client's commission of a crime or to prevent death or substantial bodily harm to another. The appellate court declined to find a "dependency exception." *R.L.R. v. State*, 116 So. 3d 570, 2013 Fla. App. LEXIS 9688, 38 Fla. L. Weekly D 1372 (Fla. Dist. Ct. App. 3d Dist. 2013).

Legal Ethics: Client Relations: Confidentiality of Information

15. Clients' motion to disqualify a lawyer's counsel in the clients' legal malpractice case was properly denied because, among other things, although the clients argued that the representation of the lawyer in the underlying case would give the lawyer's counsel access to confidential, attorney-client privileged information that he would then be able to use in those other unrelated cases against the clients, any claim that the lawyer had disclosed confidential information to his own attorney that would breach *R. Regulating Fla. Bar 4-1.6* was unfounded; the clients waived their right to attorney confidentiality because they leveled a claim against their former attorney for legal malpractice. *Miccousukee Tribe of Indians v. Lehtinen*, 114 So. 3d 329, 2013 Fla. App. LEXIS 7820, 38 Fla. L. Weekly D 1086 (Fla. Dist. Ct. App. 3d Dist. 2013).

16. Attorney was suspended for one year where: (1) she violated *R. Regulating Fla. Bar Rule 4-1.6(a)* when she told an Assistant State Attorney (ASA) that she had reason to believe that her client would lie to the Immigration Court, even if her client had mentioned to her that she would do anything, including lying in court, to avoid deportation; (2) the ASA had received confidential paperwork regarding the attorney's client's political asylum case, and the attorney was the only known person to have possession of such paperwork; (3) the attorney violated *R. Regulating Fla. Bar 4-8.4(d)* as she filed motions attacking her client's integrity, alleging the client failed to honor checks and fulfill contracts, and that she had heard that her client had robbed members of the Romanian community; and (4) the

attorney asserted that her client had been rightfully convicted for grand theft, and that she regretted helping her. Fla. Bar v. Knowles, 99 So. 3d 918, 2012 Fla. LEXIS 1349, 37 Fla. L. Weekly S 508 (Fla. 2012).

17. Bank's counsel was disqualified from representing the bank in an action on a personal guaranty because the bank's counsel also represented the personal guarantor's former lawyer in a legal malpractice action and thus had access to confidential communications between the guarantor and the guarantor's former lawyer. Frye v. Ironstone Bank, 69 So. 3d 1046, 2011 Fla. App. LEXIS 14850, 36 Fla. L. Weekly D 2078 (Fla. Dist. Ct. App. 2d Dist. 2011).

18. In a reorganized debtor's fraudulent transfer suit against a transfer agent, the transfer agent's counsel was disqualified due to a conflict of interest because, inter alia, (1) an attorney-client relationship existed between counsel and the debtor in a prior securities action, (2) the debtor and the reorganized debtor were the same corporate entity, and (3) the fraudulent transfer action was substantially related to the prior securities action. World Capita Communs., Inc. v. Island Capital Mgmt., LLC (In re Skyway Communs. Holding Corp.), 415 B.R. 859, 2009 Bankr. LEXIS 2924, 22 Fla. L. Weekly Fed. B 59 (Bankr. M.D. Fla. 2009).

19. Attorney did not violate former R. Regulating Fla. Bar 4-1.6(a) or 4-1.8(b) when the attorney testified in federal court that the attorney's opinion, stated in prior testimony, that the attorney's client was not a flight risk had changed because (1) the attorney withdrew the testimony, (2) the attorney did not reveal any communications with the client, (3) the attorney did not state what portion of the attorney's prior testimony the attorney no longer believed, and (4) R. Regulating Fla. Bar 4-1.6(c)(5) said the attorney could reveal information to the extent the attorney reasonably believed necessary to comply with the Rules of Professional Conduct. Fla. Bar v. Tickin, 2008 Fla. LEXIS 2525, 34 Fla. L. Weekly S 329 (Fla. May 21 2008).

20. The disclosure of information, that general counsel received while employed by defendant company, in general counsel's whistleblower action, was not improper under Fla. R. Bar 4-1.6(c)(2), because the disclosure was necessary to establish her claim, and disqualification of her counsel for receipt of the disclosed information was therefore improper. Alexander v. Tandem Staffing Solutions, Inc., 881 So. 2d 607, 2004 Fla. App. LEXIS 9947, 29 Fla. L. Weekly D 1610, 21 I.E.R. Cas. (BNA) 1148 (Fla. Dist. Ct. App. 4th Dist. 2004).

21. Grant of certiorari review in favor of a client and quashing of an order in favor of an attorney authorizing certain depositions that the attorney maintained he needed to prove his case was proper where the client's waiver of the attorney-client privilege was limited to the malpractice action and the attorney could reveal confidential information relating to his representation only to the extent necessary to defend himself. Ferrari v. Vining, 744 So. 2d 480, 1999 Fla. App. LEXIS 12213, 24 Fla. L. Weekly D 2118 (Fla. Dist. Ct. App. 3d Dist. 1999).

22. Attorney in a criminal case, who filed a motion to notice actual potential conflict of interest between himself and a previous client listed as a government witness, thereby disclosing confidential communications in which the previous client confessed to uncharged crimes, violated Fla. Bar R. 4-1.6. The Florida Bar v. Lange, 711 So. 2d 518, 1998 Fla. LEXIS 862, 23 Fla. L. Weekly S 263 (Fla. 1998).

23. Rule of attorney-client confidentiality comes to an end when an attorney knows that a client is engaging in crime or fraud. The Florida Bar v. Calvo, 630 So. 2d 548, 1993 Fla. LEXIS 1946, 18 Fla. L. Weekly S 641 (Fla. 1993), writ of certiorari denied by 513 U.S. 809, 115 S. Ct. 58, 130 L. Ed. 2d 16, 1994 U.S. LEXIS 5442, 63 U.S.L.W. 3257 (1994).

24. Under Fla. Bar R. 4-1.6(c)(2), former client who sued her former lawyer for legal malpractice, did not waive her attorney-client privilege with that lawyer as to the entire world, as such waiver was limited solely to the legal malpractice action; the ex-lawyer could only reveal confidential information relating to his representation of the client to the extent necessary to defend himself against the malpractice claim. Adelman v. Adelman, 561 So. 2d 671, 1990 Fla. App. LEXIS 3491, 15 Fla. L. Weekly D 1369 (Fla. Dist. Ct. App. 3d Dist. 1990).

Legal Ethics: Client Relations: Conflicts of Interest

25. Granting of a petition for certiorari was proper because obtaining confidential client information, switching sides in an ongoing lawsuit, and then filing a legal response against the former client over its objections, was worthy of the strongest protection of the abandoned client's interests. Therefore, it was incumbent on the trial court to disqualify the attorney and his new law firm from the entire lawsuit, and not only to further issues at the trial level regarding the trial in the case. Rombola v. Botchey, 2014 Fla. App. LEXIS 1374, 39 Fla. L. Weekly D 263 (Fla. Dist. Ct. App. 1st Dist. Feb. 4 2014).

26. Trial court erred in disqualifying the attorneys for petitioner class members; petitioners' right to be represented by attorneys of their choice outweighed any prejudice to the objector class members, since the attorneys' limited interaction with the objectors and their counsel would have resulted in little access to confidential information. Broin v. Phillip Morris Cos., 84 So. 3d 1107, 2012 Fla. App. LEXIS 4357, 37 Fla. L. Weekly D 702 (Fla. Dist. Ct. App. 3d Dist. 2012), quashed by 2014 Fla. LEXIS 1029, 39 Fla. L. Weekly S 165 (Fla. Mar. 27, 2014).

27. Trial court erred in disqualifying counsel for the insurer in its action against insureds because the case did not involve circumstances where counsel either disclosed confidences learned from representing the insureds in prior litigation or switched sides in violation of R. Regulating Fla. Bar 4-1.6 and 4-1.9. Cont'l Cas. Co. v. Przewoznik, 55 So. 3d 690, 2011 Fla. App. LEXIS 2645, 36 Fla. L. Weekly D 453 (Fla. Dist. Ct. App. 3d Dist. 2011).
28. In a reorganized debtor's fraudulent transfer suit against a transfer agent, the transfer agent's counsel was disqualified due to a conflict of interest because, inter alia, (1) an attorney-client relationship existed between counsel and the debtor in a prior securities action, (2) the debtor and the reorganized debtor were the same corporate entity, and (3) the fraudulent transfer action was substantially related to the prior securities action. World Capita Communs., Inc. v. Island Capital Mgmt., LLC (In re Skyway Communs. Holding Corp.), 415 B.R. 859, 2009 Bankr. LEXIS 2924, 22 Fla. L. Weekly Fed. B 59 (Bankr. M.D. Fla. 2009).
29. Where lawyer used information relating to his earlier representation of a client against her in a divorce proceeding where he represented former client's husband, he violated Fla. Bar R. 4-1.6. The Florida Bar v. Dunagan, 731 So. 2d 1237, 1999 Fla. LEXIS 159, 24 Fla. L. Weekly S 83 (Fla. 1999).
30. Attorney in a criminal case, who filed a motion to notice actual potential conflict of interest between himself and a previous client listed as a government witness, thereby disclosing confidential communications in which the previous client confessed to uncharged crimes, violated Fla. Bar R. 4-1.6. The Florida Bar v. Lange, 711 So. 2d 518, 1998 Fla. LEXIS 862, 23 Fla. L. Weekly S 263 (Fla. 1998).
31. Defendant's court-appointed counsel was not required to withdraw from representing defendant, who had filed a malpractice complaint against the attorney, because the trial court deemed defendant's claim of ineffective assistance of counsel to be frivolous and the trial court ordered the attorney to continue to represent defendant. Boudreau v. Carlisle, 549 So. 2d 1073, 1989 Fla. App. LEXIS 5132, 14 Fla. L. Weekly 2242 (Fla. Dist. Ct. App. 4th Dist. 1989).
32. Where state attorney was not involved in the prosecution of defendant and had not revealed any confidential information about defendant known to him prior to his hire to other assistant state attorneys, the court refused to disqualify the state attorney's office from prosecution because it was not a law firm and there was no conflict of interest under former Fla. Code of Professional Responsibility DR 4-101 (now Rules Regulating The Florida Bar, Rule4-1.6), former 5-105 (now Rules Regulating The Florida Bar, Rule4-1.7), or former 9-101(B) (now Rules Regulating The Florida Bar, Rule4-1.10). State v. Fitzpatrick, 464 So. 2d 1185, 1985 Fla. LEXIS 3276, 10 Fla. L. Weekly 141 (Fla. 1985).

Legal Ethics: Client Relations: Effective Representation

33. Where lawyer used information relating to his earlier representation of a client against her in a divorce proceeding where he represented former client's husband, he violated Fla. Bar R. 4-1.6. The Florida Bar v. Dunagan, 731 So. 2d 1237, 1999 Fla. LEXIS 159, 24 Fla. L. Weekly S 83 (Fla. 1999).

Legal Ethics: Sanctions: Suspensions

34. Attorney was suspended for one year where: (1) she violated R. Regulating Fla. Bar Rule4-1.6(a) when she told an Assistant State Attorney (ASA) that she had reason to believe that her client would lie to the Immigration Court, even if her client had mentioned to her that she would do anything, including lying in court, to avoid deportation; (2) the ASA had received confidential paperwork regarding the attorney's client's political asylum case, and the attorney was the only known person to have possession of such paperwork; (3) the attorney violated R. Regulating Fla. Bar 4-8.4(d) as she filed motions attacking her client's integrity, alleging the client failed to honor checks and fulfill contracts, and that she had heard that her client had robbed members of the Romanian community; and (4) the attorney asserted that her client had been rightfully convicted for grand theft, and that she regretted helping her. Fla. Bar v. Knowles, 99 So. 3d 918, 2012 Fla. LEXIS 1349, 37 Fla. L. Weekly S 508 (Fla. 2012).
35. Previously disciplined attorney was suspended for one year, followed by three years of probation, for neglect of three clients' cases by violating: (1) Fla. R. Bar 1-3.3, by failing to notify the executive director of changes in his mailing address and business telephone; (2) Fla. R. Bar 4-1.3, by failing to diligently represent the client; (3) Fla. R. Bar 4-1.4(a), by failing to keep the client reasonably informed; (4) Fla. R. Bar 4-1.4(b), by failing to permit the client to make informed decisions; and (5) Fla. R. Bar 4-1.3, 4-1.4(a), 4-1.4(b), and 4-1.6(a)(2), by failing to withdraw when his mental condition impaired his ability to represent a client. The Fla. Bar v. Cimble, 840 So. 2d 955, 2002 Fla. LEXIS 2409, 27 Fla. L. Weekly S 963 (Fla. 2002).

Torts: Malpractice & Professional Liability: Attorneys

36. Although R. Regulating Fla. Bar 4-1.6, 4-1.9(b) provided that an attorney had a continuing duty to the client not to disclose confidences even past the termination of the matter for which representation was sought, the client failed

Fla. Bar Reg. R. 4-1.6

to allege the breach with particularity; however, the client was given an opportunity to describe the information in an amended legal malpractice complaint. *Elkind v. Bennett*, 958 So. 2d 1088, 2007 Fla. App. LEXIS 9508, 32 Fla. L. Weekly D 1526 (Fla. Dist. Ct. App. 4th Dist. 2007).

LexisNexis Florida Rules of Court Annotated

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