

THE PHILADELPHIA BAR ASSOCIATION
PROFESSIONAL GUIDANCE COMMITTEE

Opinion 2008-14
(February 2009)

The inquirer is court-appointed counsel for an indigent whose matter is pending in the United States Court of Appeals for the Third Circuit. The government agrees that the matter should be remanded for resentencing. There are remaining issues on which relief is unlikely to be granted. The appellant requested that the inquirer file his draft motion for return of \$500 in currency seized at the time of the appellant's arrest. The inquirer has advised the appellant that the government is willing to return the money once it is determined that a new trial will not be granted by the court of appeals. The appellant has returned the inquirer's correspondence with a superimposed demand note for \$97 million in his favor purportedly bearing the inquirer's signature. The note purports to carry three million dollars a day in interest.

The inquirer has determined that she cannot continue to represent the appellant due to the conflict between the appellant's interests and her personal interests created by the purported demand note. She has filed a petition to withdraw.

The inquirer seeks advice as to what further disclosure is authorized. It is the opinion of the inquirer that the client has committed forgery and mail fraud. The inquirer is also concerned that the client will engage in continuing attempts to perpetrate a fraud against her by seeking to enter a judgment on the note.

Several Pennsylvania Rules of Professional Conduct (the "Rules") are implicated in this inquiry.

Rule 1.4. **Communication** provides in part that:

(a) A lawyer shall:

...

(3) keep the client reasonably informed about the status of the matter;

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

...

Comment:

(1) Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Rule 1.6. Confidentiality of Information

(a) A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

...

(c) A lawyer may reveal such information to the extent that the lawyer reasonably believes necessary:

...

(2) to prevent the client from committing a criminal act that the lawyer believes is likely to result in substantial injury to the financial interests or property of another; ...

First, it must be determined whether this communication is confidential. All information relating to the representation is confidential unless disclosure is authorized by consent or disclosure is impliedly authorized to carry out the representation. The Committee finds no basis leading to a conclusion that disclosure is authorized in this fashion and thus, the appellant's correspondence is confidential. However, Rule 1.6c has exceptions that allow for disclosure, and the Committee believes that if the inquirer reasonably believes that revealing the appellant's correspondence is necessary to prevent him from committing an act likely to result in substantial injury to the inquirer's financial interests or property, then the inquirer may reveal the correspondence as per the exception provided in 1.6c2,¹ **provided the inquirer first discusses the matter and proposed disclosure with the client** (see discussion below). The Committee cautions however, that disclosure is limited to the extent necessary to prevent the injury. Thus, the inquirer must examine how any given proposed disclosure would serve that purpose and also what the minimum amount of information is in order to accomplish that purpose.

The Committee notes that unless and until the inquirer is granted leave to withdraw, that her status as the appellant's counsel continues and that the inquirer has a continuing obligation under Rule 1.4 to consult with her client and to advise him. As a result, the inquirer must communicate with the client about the inquirer's concerns raised by his correspondence, and must advise the client in advance of any

¹ The consensus of the Committee is that the documents forwarded to the inquirer are lacking in the appearance of authenticity and *bona fides*. At this point, the Committee believes that at this point they constitute only an inchoate threat to the inquirer. That belief would be subject to change were the client to take affirmative action to enforce the purported note. However, under Rule 1.7a2, it is the inquirer's perception of the potential threat that creates the conflict in this situation.

proposed disclosure she intends to make and what the consequences thereof will be, thus allowing the client to take appropriate remedial action regarding the document.

CAVEAT: The foregoing opinion is advisory only and is based upon the facts set forth above. The opinion is not binding upon the Disciplinary Board of the Supreme Court of Pennsylvania or any other Court. It carries only such weight as an appropriate reviewing authority may choose to give it.