NEW YORK STATE BAR ASSOCIATION
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Committee on Professional Ethics

Opinion #503 - 2/1/79 (67-78)

Topic: Confidences and secrets of client; paralegal

Digest: Lawyer is bound not to reveal confidences and secrets acquired while employed as a paralegal prior to his admission to the Bar.

Code: Canons 4, 7 and 9; EC 1-5, 4-3, 4-4, 4-5, 4-6, 9-3, 9-6; DR 1-101(A)(4), 4-101(A), (B) and (D), 5-101(A), 5-105(D), 7-101(A) and 7-102(A)(8).

QUESTION

A lawyer, while employed as a paralegal in a law firm, prior to his admission to the Bar, became privy to certain confidential information relating to one of the firm's clients. The lawyer, now associated in the practice of law with another firm, has been asked to participate in a matter involving his former employer's client wherein the information he obtained as a paralegal may be of some relevance.

Under the circumstances stated, may the lawyer or any of his present associates undertake the proposed representation?

OPINION

In recent years, the use of legal assistants, or "paralegals", has become commonplace. Accompanying the widespread use of paralegals has been a noticeable increase in the degree of sophistication in the tasks to which they are assigned. Another understandably related phenomenon has been the dramatic rise in the number of paralegals who are entering the ranks of our profession. It is against this background that we turn to consider the question posed.

The Code is addressed to members of the Bar, not paralegals. In this light, it will be seen that the only references to the acquiring of confidential information by paralegals are those which serve to impose upon their lawyer employers an obligation to take certain steps to assure that the confidentiality of the information is not compromised. Thus, for example, DR 4-101(D)

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provides in relevant part:

> "A lawyer shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences or secrets of a client...."

See also, EC 4-3 and N.Y. State 473 (1977).

While the Code's mandate to preserve the confidences and secrets of a client is addressed only to lawyers, it will be noted that to some extent the ethical rule is by statute brought to bear on all persons acquiring knowledge of client confidences. Cf., CPLR 4503 with EC 4-4 (explaining that "[t]he attorney client privilege is more limited than the ethical obligation of a lawyer to guard the confidences and secrets of his client"). Hence, regardless of the paralegal's subsequently acquired status upon admission to the Bar, the law would still require him to hold inviolate the confidences of his erstwhile employer's client. To the extent that his conduct in revealing those confidences would violate the provisions of CPLR 4503, ipso facto, such conduct when undertaken by him as a lawyer would violate the Code. See, EC 1-5, DR 1-101 (A)(4) and DR 7-102(A)(8).

Even if the information obtained by the former paralegal was not by its nature subject to the attorney client privilege, but merely constituted a "secret" within the meaning of DR 4-101(A), we nevertheless believe that the same may not be revealed. The ethical restraints imposed upon the former paralegal's erstwhile employer are identical to the ethical restraints imposed upon the former paralegal himself, qua lawyer. Just as the lawyer could not undertake to cause another's employee to divulge information protected by Canon 4, so too he himself could not reveal information acquired by him when employed by another lawyer. See, e.g., N.Y. State 422 (1975) and N.Y. State 386 (1975).

Since, on the facts of the question posed, the information obtained by the former paralegal is relevant, he may not undertake the proposed representation. His Canon 4 obligation to preserve the confidences and secrets of his erstwhile employer's client, when coupled with the obligations imposed by Canons 7 and 9 to pursue zealously the interests of his present client while avoiding any appearance of impropriety, effectively serve to disqualify him. See, DR 4-101(B), DR 5-101(A) and DR 7-101(A); see also, EC 4-5, EC 4-6, EC 9-3 and EC 9-6. Since the former paralegal is disqualified from undertaking the proposed representation, under the circumstances here presented, his associates in private practice would similarly be disqualified. See, DR 5-105(D); cf., N.Y. State 502 (1979) with N.Y. State 410 (1975).

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For the reasons stated, the question posed is answered in the negative.
