

Final

**Rhode Island Supreme Court
Ethics Advisory Panel Op. 2024-04
Issued April 11, 2024**

FACTS

The inquiring attorney represented a client in a criminal matter in the District Court. During the trial, the client authorized the inquiring attorney to obtain written transcripts of the testimony of several law enforcement officers who had testified for the prosecution. Transcripts of District Court proceedings must be ordered from a third-party vendor with whom the Judiciary has contracted. The inquiring attorney reports that he or she ordered and received copies of the transcripts from the vendor on behalf of the client. Thereafter, the client communicated with the vendor regarding payment procedures, paid the vendor for the transcripts via credit card, and provided proof of payment to the inquiring attorney.

Approximately one week later, the criminal charges against the client were dismissed. Approximately one week after the dismissals, the client disputed the payment for the transcripts with the client's credit card company. The vendor contacted the inquiring attorney to inform him or her of the dispute and ask for his or her aid in resolving the issue. The inquiring attorney thereafter attempted to correspond with the client regarding the credit card dispute but was repeatedly rebuffed. The inquiring attorney no longer represents the client.

The vendor has asked the inquiring attorney to prepare an affidavit affirming that the inquiring attorney received the transcripts and that the work performed was acceptable, which the vendor intends to use to contest the credit card dispute. The inquiring attorney wishes to provide the affidavit but is concerned that doing so may violate the Rules of Professional Conduct.

ISSUE PRESENTED

The inquiring attorney asks whether he or she may provide the requested affidavit to the vendor under the Rules of Professional Conduct?

OPINION

It is the Panel's opinion that the inquiring attorney may provide the requested affidavit to the vendor under the Rules of Professional Conduct.

REASONING

The disposition of information regarding a representation is governed by Rule 1.6 (current clients) and Rule 1.9 (former clients) of the Rules of Professional Conduct.

Rule 1.6 provides that:

(a) A lawyer shall not reveal information relating to the 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 paragraph (b).

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

(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm;

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(3) to secure legal advice about the lawyer's compliance with these Rules; or

(4) to comply with other law or a court order.

“A fundamental principle in the client-lawyer relationship is that the lawyer maintain confidentiality of information relating to the representation.” Rule 1.6, Comment [1]. This principle “applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source.” *Id.* The Panel has historically “interpreted this obligation broadly.” Rhode Island Supreme Court Ethics Advisory Panel Op. 97-23; see also Rhode Island Supreme Court Ethics Advisory Panel Op. 95-61; Rhode Island Supreme Court Ethics Advisory Panel Op. 94-42 (determining that even the identity of a client is confidential information protected by Rule 1.6).

“The duty of confidentiality continues after the client-lawyer relationship has terminated.” Rule 1.6, Comment [7]. This principle is embodied in Rule 1.9(c):

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

In this case, the Panel finds that Rule 1.9(c)(1) applies here. The vendor has asked the inquiring attorney to prepare an affidavit affirming that the inquiring attorney received the transcripts authorized by the former client and that the work performed was acceptable. These affirmations concern information regarding the inquiring attorney's former representation of the client. See Rule 1.6, Comment [1]. The vendor seeks to use the affidavit to contest the former client's dispute of the credit card charge for the transcripts. Such use would be to the former client's disadvantage because it challenges—and could invalidate—the client's dispute and could reinstate the credit card charge. Thus, the propriety of the inquiring attorney's preparation of the requested affidavit turns on whether the information in the affidavit “has become generally known.”

The Panel has not had occasion to determine whether information related to a representation “has become generally known.” Relevant authorities offer a range of standards. One federal court has held that “generally known” information “does not only mean that the information is of public record . . . The information must be within the basic understanding and knowledge of the public.” Pallon v. Roggio, 2006 WL 2466854, at *7 (D.N.J. Aug. 24, 2006). The Supreme Court of Appeals of West Virginia has deemed information to be “generally known” if it is “contained in an independent source” State ex rel. Youngblood v. Sanders, 575 S.E.2d 864, 872 (W. Va. 2002). Opinion Number 595 of the Supreme Court of Texas Professional Ethics Committee defines “generally known” to mean “information that is actually known to some members of the general public and is not merely available to be known if members of the general public choose to look where the information is to be found.” Comment *d.* to the Restatement (Third) of the Law Governing Lawyers § 59 (2000) similarly explains that “[w]hether information is generally known depends on all circumstances relevant in obtaining the information,” such that information “obtainable through publicly available indexes and similar methods of access” may be “generally known” while information that may only be obtained “by means of special knowledge or substantial difficulty or expense” may not be.

The common thread that binds these various standards together is the recognition that the information in question must be specifically known to persons outside the attorney-client relationship. See 27 N.C. Admin. Code Rule 1.09, Comment [8] (observing that “[i]f the information is known or readily available to a relevant sector of the public, such as the parties involved in the matter, then the information is probably considered ‘generally known’”). Here, the inquiring attorney reports that the vendor already knows information relevant to the credit card dispute—that the inquiring attorney ordered the transcripts on behalf of the former client, that the former client received the transcripts, and that the former client initially paid for the transcripts via credit card before instituting the dispute. It is the Panel's opinion that on this basis, such information is “generally known” for the purposes of Rule 1.9(c)(1) in this matter.

Accordingly, the Panel concludes that it is permissible for the inquiring attorney to prepare the affidavit requested by the vendor. In doing so, the Panel cautions the inquiring attorney to confine the document to information relating to the credit card dispute and not reveal information relating to any other aspect of the former representation. See generally Rule 1.6.