

1979 WL 43453 (S.C.A.G.)  
Office of the Attorney General  
State of South Carolina  
July 10, 1979

\*1 Mr. Richard A. Harpootlian  
Deputy Solicitor  
Fifth Judicial Circuit  
Columbia, South Carolina

Dear Mr. Harpootlian:

You have requested the opinion of this Office as to the propriety of testimony by an attorney to the Grand Jury as to matters affecting his client's interests.

The facts as stated are as follows:

An attorney has been subpoenaed to testify before a Grand Jury concerning information gained by him in the investigation of a pending civil case. The civil case is in behalf of his client against a business firm. The case involves improper and perhaps criminal conduct by certain employees of the business firm. The firm wishes to have access to the information in the lawyer's file.

Question:

Is this information subject to disclosure to the Grand Jury by the attorney?

Answer:

The information may not be revealed to the Grand Jury by the attorney without his client's consent, if its disclosure would be likely to be detrimental to his client's interest.

Applicable Law:

Rule 32 of the Rules of the Supreme Court of South Carolina subject attorneys practicing law in this State to the 'Code of Professional Responsibility' of the American Bar Association. Canon 4 of the Code requires a lawyer to preserve the 'confidences and secrets' of his clients. The pertinent part is Disciplinary Rule 4-101(A): 'Confidence' refers to information protected by the attorney-client privilege under applicable law, and 'secret' refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

Violation of this rule would subject the attorney to disciplinary procedures as established by law.

If the client, having knowledge of 'other information' gained by the attorney in the course of his representation of client, refuses to waive the attorney-client privilege, then the attorney may not reveal the information to a Grand Jury, but must assert his client's privilege and decline to testify about any matters concerning his client's case.

In addition to the Code of Professional Responsibility, the case law firmly supports the right of the client to have the confidential matters in his file protected from disclosure by his attorney. See the attached note to Rule 32, Canon 4.

See, also, [McDonald v. Berry](#), 243 S.C. 453, 134 S.E.2d 392 (1964); [Drayton v. Industrial Life & Health Ins. Co.](#), 205 S.C. 98, 31 S.E.2d 148 (1944), and [Duplan Corporation v. Deering Milliken, Inc.](#), 397 F.Supp. 1146 (D.C., S.C. 1974).

No cases have been found that release an attorney of his obligation to preserve information even though it is of a criminal nature that does not implicate his client, so long as the disclosure of the information would be detrimental to his client's interest. There is authority to the effect that the privilege does not cover a crime to be committed in the future, but we find no exceptions as to information concerning past criminal conduct which is gained by the lawyer in investigation of his client's case.

Yours very truly,

\*2 Frank K. Sloan  
Deputy Attorney General

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