



Lawyers Client Confidentiality by Jodi L. Wyman

Even people who do not know a lot about what lawyers do usually understand the idea of lawyer and client confidentiality.

The Code of Conduct for lawyers states that they must hold in strict confidence all information that was learned in the course of the professional relationship. The only time a lawyer can disclose such information is with the consent of the client or as required by law.

The purpose behind the rule is that a lawyer cannot properly represent their client unless the client can be completely and fully candid. They must feel they can tell their lawyer everything, and so what they tell their lawyer is protected.

The rule is very wide. In fact, a lawyer is not allowed to disclose whether a person even is their client. The confidentiality rule continues to exist even after the lawyer no longer acts for the client. Gossip about files has to be avoided, even if the client is not specifically named. In a small town, it would not be hard to figure out who was being discussed.

One interesting exception to the

rule is when disclosure of information is necessary to prevent a crime. In those cases, the lawyer is allowed to reveal what they know if it could prevent a crime. For example, if a client states that they intend to steal a car, the lawyer can contact the authorities if they choose. If, however, the crime could involve violence, the lawyer is absolutely required to reveal the information to the proper authorities. If the client says they intend to rob a bank, their lawyer has to call the police. In these cases, protection of the public is more important than the right to secrecy.

What if, on the other hand, a client confesses to a past crime? In those cases, there is nothing that can be done to prevent the crime at that point, and so the lawyer is required to keep that information secret. A more difficult issue arises when the client tells their lawyer they just robbed a bank, and they hand over the smoking gun. The Paul Bernardo case brought this scenario to light. Mr. Bernardo's lawyer had possession of the incriminating videotapes for 17 months while the murder investigation was underway, but did not reveal them to the police. It is believed that had he turned

them over to the Crown Attorney's office, Karla Homolka would not have been offered the light plea bargain sentence she was given. That case caused a lot of controversy and forced the Law Society of Upper Canada to review its rules on lawyer and client confidentiality.

Lawyers also have a duty to ensure that their secretaries and office staff understand and adhere to the importance of the confidentiality rule.

The rule does not however apply to information that is public knowledge. Most people are surprised to discover that much of the information on court files is in fact public. A lawyer has to be very careful about what information he or she puts in court documents, as anyone could read them.

Another part of the rule is that confidential information cannot be used by the lawyer to benefit him or her, or anyone else. Although most lawyers could write fascinating books about their cases, the Code specifically mentions that a lawyer who writes an autobiography must avoid disclosing private information about clients.

Lawyers have to stick to writing fiction.