

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

41 SOUTH HIGH STREET-SUITE 3370, COLUMBUS, OH 43215-6105
(614) 644-5800 FAX: (614) 644-5804

OFFICE OF SECRETARY

OPINION 90-19

Issued August 17, 1990

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

[Not current-subsequent rule amendments to DR 1-103, eff. Sep. 1, 1995 and to Gov. Bar R. V.]

SYLLABUS: Members of a certified grievance committee, in the discharge of their disciplinary responsibilities, may share information about a lawyer with members of a recognized Lawyers' Assistance Committee without violating their oath of secrecy.

OPINION: Your bar association has adopted a policy for disciplining a lawyer who is a substance abuser. You inquire whether members of the grievance committee would violate their oath of secrecy in disclosing the lawyer's name to the Lawyers' Assistance Committee (LAC) who in turn would address the substance abuse problem affecting his or her practice. The Ohio State Bar Association originally established LAC and now organized subcommittees function in many of Ohio's counties. The purpose of LAC is to help lawyers and judges who have substance abuse problems, and to educate the profession about dependency on alcohol and other drugs.

Governing Bar Rule V (43) provides the following:

- (a) All proceedings and documents relating to review and investigation of complaints made under these Rules shall be private except:
 - (i) where respondent shall request in writing that they be public; or
 - (ii) where respondent by voluntary act waives privacy of the proceedings.
- (c) All members of the Board, or any certified grievance committee, shall be required, prior to taking office, to swear or affirm that they will abide by these rules and further that they will protect the privacy of the proceedings and documents relating thereto.

This rule serves the important purpose of keeping the complaint and its investigation private until probable cause that a violation occurred has been established. It protects a lawyer's reputation during the period of investigation. The confidential aspect of the investigation also encourages the filing of complaints, the cooperation of witnesses and permits the disciplinary agency to complete an investigation outside the glare of public scrutiny or publication of the existence of an investigation.

Are there any circumstances in which members of a grievance committee are permitted to share confidential information with someone outside the committee? The Ohio Supreme Court has decided two cases that discuss the oath of secrecy. In the case of In re Klausmeyer (1970), 24 Ohio St. 2d 143, the court confronted the extent of the oath of secrecy when it decided a habeas corpus action brought by two members of the Cincinnati Bar Association's Grievance Committee. The lawyers were held in contempt for refusal to answer questions posed by a grand jury concerning information and names arising from one of the committee's investigations. Their refusal to answer the grand jury's subpoena was based on Rule XVIII (20) of the Rules of Practice of the Ohio Supreme Court. This rule of practice mirrors Gov. Bar R. V (43).

Because the proceedings of a grand jury in Ohio are secret and may not be divulged, the Court found that the petitioners had to appear and give testimony in response to the subpoena. However, because this same grand jury by law must keep all information it gathers private, the testimony of the committee members could not be considered a violation of their obligations.

In a 1989 case, In re Petition of the Grievance Committee of the Toledo Bar Association (1989), 47 Ohio St. 3d 611, the Court again underscored this link between a bar grievance committee investigation and information gathered by a grand jury. In this case the grievance committee filed an original action with the Court and obtained an order permitting members of the Lucas County grand jury to cooperate with a pending investigation being conducted by the grievance committee. The Court concluded that the relief was necessary for the bar to perform its investigatory function effectively. Therefore, the grand jury members were relieved of their oath of secrecy and allowed to cooperate in discussing information gained during the grand jury proceeding.

In a similar way members of the LAC assume an obligation and oath of confidentiality. Because Assistance Committee members are privy to information concerning substance abuse, drug possession and use and other violations of the criminal code, they have

agreed not to divulge this information to anyone including law enforcement officials. Indeed the Ohio Supreme Court, in June of 1987, amended the Code of Professional Responsibility to provide protection for members of this committee. Disciplinary Rule 1-103 (C) now reads as follows:

Any knowledge obtained by a member of a committee or subcommittee of a bar association designed to assist lawyers with substance abuse problems shall be privileged for all purposes under DR 1-103, provided such knowledge was obtained while such member was performing duties as a member of such committee or subcommittee.

Accordingly, given the guidelines that LAC operates under, it is not a violation of the grievance committee's oath of secrecy to divulge the name of a lawyer to LAC. Our opinion is limited to those circumstances in which a lawyer is being investigated, there is evidence of a substance abuse problem and where a recognized LAC can offer assistance with this problem. We recommend the Grievance Committee and the local LAC have an agreement in writing regarding the preservation of secrecy and confidentiality.

This is an informal, non-binding advisory opinion based upon the facts presented and limited to questions arising under the Code of Professional Responsibility.