

NEW HAMPSHIRE BAR ASSOCIATION
Ethics Committee Formal Opinion
Confidentiality Issues in Law Firm Use of Outside Word Processing Services

April 12, 1983

FORMAL OPINION

ETHICS COMMITTEE ADVISORY OPINION: #1982-3/16
March 16, 1982

Reviewed by Board of Governors April 21, 1983

QUESTION:

A law firm is considering entering into a contract with an independent word processing service, which would prepare on a word processing system client documents, such as wills, corporate papers, divorce libels and divorce stipulations. An attorney of the firm has inquired whether the New Hampshire Code of Professional Responsibility would allow it to enter into a contract to utilize word processing services by a business organization not associated with the law firm. He has also asked if a bond to ensure confidentiality should be required of such an outside business entity?

RESPONSE:

I. With respect to the first question, the Ethics Committee thinks that Informal Opinion 1364 of the ABA Committee on Ethics and Professional Responsibility provides appropriate guidance. That opinion reads as follows:

Informal Opinion 1364 **April 26, 1976**
Reconsideration of Informal Opinion 1267-
Duty to Inform Client that an Outside
Data Processing Firm Is to be Employed

You state that your firm is considering the use of a computerized data processing service bureau for bookkeeping, accounting, and data processing purposes, and you ask whether the use of these services requires that the consent of the client be obtained in advance, as EC 4-3 would indicate.

For purposes of this informal opinion, we are assuming that the information to be provided to the service bureau includes client identification information involving client numbers, client names, matter names, and, for purposes of timekeeping, detailed descriptive information involving work performed by the attorney on specified dates on particular matters for identified clients, financial information, and documents being prepared by computerized word processing.

Ethical Consideration 4-3 is not mandatory. The Disciplinary Rules are mandatory, and DR 4-101 (D) provides as follows:

“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, except that a lawyer may reveal the information allowed by DR 4-101(C) through an employee.”

Under modern methods of technology and procedure in law offices, the Committee believes that the use of outside agencies for statistical, bookkeeping, accounting, data processing, banking, printing, and other legitimate purposes is comparable to the use of employees and associates and, accordingly, is embraced within the rule which refers to “others whose services are utilized by him.” The Committee believes that clients are aware of the use of such modern methods of technology and procedures in law offices, and that clients understand the necessity for such use by law firms and expect law firms to use such outside agencies in order efficiently and effectively to provide for furnishing of legal services.

DR 4-101(B) reads as follows:

“Except when permitted under DR 4-101(C), a lawyer shall not knowingly:

“(1) Reveal a confidence or secret of his client.

“(2) Use a confidence or secret of his client to the disadvantage of the client.

“(3) Use a confidence or secret of his client for the advantage of himself or of a third person, unless the client consents after full disclosure.”

It is our view that under modern business and legal practice, clients know that their confidences must be communicated by a lawyer to certain individuals and machines selected by that lawyer, as suggested in DR 4-101(D) above quoted. We believe that DR 4-101(D), imposing upon the lawyer the duty of reasonable care in these circumstances, requires interpretation of DR 4-101(B) which incorporates therein the power to communicate to agents presupposed by DR 4-101(D).

We, therefore, conclude that it is not mandatory for an attorney to notify his client in advance of giving information from the client’s file to a data processing service for bookkeeping, accounting, and other data processing as above detailed. However, client relationships may suggest that an attorney notify a client in advance, such as when an attorney has reason to believe that client may not possess a degree of business sophistication sufficient to realize that modern methods of technology require the use of outside agencies. Of course, the lawyer is required to exercise due care in the selection of the agency and to take all reasonable steps to assure that the agency maintains the confidentiality of the information.

Prior Informal Opinion 1267 in this matter, dated February 16, 1973, is hereby withdrawn.

II. With respect to the second question, the Committee thinks that the law firm must take reasonable measures to ensure that an outside word processing service, just as a law firm employee, does not disclose or use the confidences or secrets of a client. In the Committee's opinion, it would be appropriate, although not necessarily mandatory, to require bonding with respect to preservation of client confidences and secrets, if such bonding were available. Whatever arrangements are decided upon to ensure protection of client confidences and secrets, an attorney using an outside word processing service should on a regular basis confirm that the outside organization understands its obligations with respect to confidentiality.