



## ETHICS ADVISORY OPINION

**08-06**

UPON THE REQUEST OF A MEMBER OF THE SOUTH CAROLINA BAR, THE ETHICS ADVISORY COMMITTEE HAS RENDERED THIS OPINION ON THE ETHICAL PROPRIETY OF THE INQUIRER'S CONTEMPLATED CONDUCT. THIS COMMITTEE HAS NO DISCIPLINARY AUTHORITY. LAWYER DISCIPLINE IS ADMINISTERED SOLELY BY THE SOUTH CAROLINA SUPREME COURT THROUGH ITS COMMISSION ON LAWYER CONDUCT.

### **Factual Background:**

This inquiry was not accompanied by a statement of facts.

### **Questions Presented:**

1. What are the ethical obligations of an attorney who suspects that his client is an illegal alien?
2. Does an attorney have a duty to inquire as to the immigration status of his clients?
3. What are the obligations of an attorney who knows that his client is an illegal alien?

### **Summary:**

The obligation of an attorney who suspects or knows that his client is an illegal alien are the same as the obligations of an attorney who suspects or knows that his client is engaged in any other form of ongoing criminal activity.

### **Opinion:**

The actions of an attorney who knows or suspects that his client is engaged in criminal activity are governed by SCRPC 1.6 concerning client confidentiality. This rule is designed to foster the trust and open communication that are critical to effective representation. See Rule 1.6, Comment 2. Therefore, Rule 1.6(a) prohibits disclosure of client information "unless the client gives informed

consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).”

Rule 1.6(b) permits, but does not require, disclosure of confidential information under certain circumstances. As related to criminal activity, Rule 1.6(b)(1) permits disclosure of confidential information when the client is planning to commit a prospective criminal act. As the Committee understands Rule 1.6(b)(1), neither a past criminal act (*e.g.*, entering the country illegally) nor continuing status as an illegal alien constitutes a prospective criminal act within the ambit of the Rule. Similarly, the remaining exceptions set forth in Rule 1.6(b) are facially inapplicable to the circumstances indicated by the inquiry, *i.e.*, mere knowledge or suspicion by the attorney that his client is in the country illegally.

Rule 1.2(d) prohibits a lawyer from assisting a client in conduct that the lawyer knows is criminal or fraudulent. By its terms, this Rule would prohibit an attorney from helping a client remain in the country illegally. It does not, however, prohibit the lawyer from assisting a client in legal affairs unrelated to the client’s immigration status.

An attorney generally does not have a duty to inquire into a client’s immigration status unless immigration status is relevant to the representation and the attorney has reason to suspect that the client is in the country illegally. See Rule 3.3.