

Final

**Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2011-05 Request No. 991
Issued November 10, 2011**

FACTS

The inquiring attorney is an approved attorney for several title insurance companies. Typically, title insurers will conduct audits of the files of their approved attorneys to ascertain compliance with required procedures. One company, First American Title Insurance Company, now requires unconditional open access to the inquiring attorney's IOLTA account, and to the files of clients for whom the inquiring attorney applied for and received title insurance from First American Title. The inquiring attorney states that those files may contain copies of clients' tax returns, social security numbers of sellers and buyers, drivers' licenses, bank loan applications containing employment information, bank account numbers, bank statements, and other personal information. At least one of the financial institutions requires the inquiring attorney to agree to keep non-public customer information confidential pursuant to the Gramm-Leach-Bliley Act.

The inquiring attorney has made certain documents available to First American Title but has refused to give it unconditional access to client files and to his/her IOLTA account based on his/her obligations under the Rules of Professional Conduct and confidentiality agreements with financial institutions.

ISSUE PRESENTED

May an attorney who is an approved attorney for title insurance companies provide the title companies unconditional access to his/her IOLTA account records, and to files of clients who obtain title insurance from those title companies?

OPINION

A title company's unlimited access during routine audits of the inquiring attorney's client files and of his/her IOLTA account records, without the express or implied consent of the affected clients, is prohibited by Rule 1.6.

REASONING

Rule 1.6 entitled “Confidentiality of information” is pertinent to this inquiry. The rule states:

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).
- (b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:
 - (1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm;
 - (2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
 - (3) to secure legal advice about the lawyer's compliance with these Rules; or
 - (4) to comply with other law or a court order.

Rule 1.6 prohibits a lawyer from revealing any information relating to a client’s representation without consent, unless disclosure is impliedly authorized by the client in order to carry out the representation, or unless a specific exception to confidentiality applies. In the instant inquiry the title insurance company’s audit requires access to information relating to the inquiring attorney’s representation of real estate clients. None of the exceptions to Rule 1.6 applies. Therefore, the title insurer’s access to the clients’ files must be made with the consent of the clients.

By hiring a lawyer to obtain title insurance, a client impliedly authorizes the lawyer to provide the title insurance company with information necessary to obtain a title policy. As to that information, a lawyer’s disclosure during a title company’s audit is permissible. However, the lawyer does not have the client’s implied authority to disclose other information relating to the client, including information contained in the attorney’s IOLTA account records. Disclosure of such other information to the title company may only be made pursuant to the client’s informed consent. Further, information in the inquiring attorney’s trust account records relating to the representation of clients who are not subjects of the title company’s audit must be protected.

The Panel concludes that a title company’s unlimited access during routine audits of the inquiring attorney’s client files and of his/her IOLTA account records, without the express or implied consent of the affected clients, is prohibited by Rule 1.6. The Panel offers no opinion about the evidentiary issue of whether disclosure of confidential information in an audit waives any applicable attorney-client privilege.