

What ethical dilemma does an attorney face when they learn a former client committed perjury in a civil case?

An attorney faces a conflict between their duty of candor to the tribunal and their duty to preserve client confidentiality when they discover a former client's perjury led to the presentation of false evidence. While the attorney is obligated to uphold the integrity of legal proceedings, they are also bound to protect their client's confidential information.

Does an attorney's duty of confidentiality outweigh their duty of candor to the tribunal in cases of client perjury?

No. The Arizona Rules of Professional Conduct (ER) prioritize the attorney's duty of candor to the tribunal over client confidentiality in instances of client perjury. ER 3.3(c) mandates disclosure of a client's false testimony, even if obtained through confidential communication, to ensure a fair decision-making process.

When is an attorney required to take remedial action for unknowingly presenting false evidence due to client perjury?

An attorney must take "reasonable remedial measures" when they "know" false material evidence has been presented to a "tribunal." "Knowing" implies actual knowledge, often based on the client's admission. A "tribunal" includes administrative bodies acting in an adjudicative capacity. The false evidence must be "material" to the case, meaning it could have potentially swayed the tribunal's decision.

What are the steps an attorney should take when they learn of a former client's perjury?

Private Remonstrance: The attorney should confidentially approach the former client, urging them to withdraw the false evidence and explaining the attorney's ethical obligation to take remedial measures, including potential disclosure to the tribunal.

Motion to Withdraw Evidence: If the client refuses, the attorney should seek to withdraw the false evidence from the tribunal without revealing the client's perjury. They can cite client confidentiality and attorney-client privilege as justification.

Withdrawal from Representation: In some cases, withdrawing from representation might be a reasonable remedial measure, particularly if the false evidence has not yet been offered.

Disclosure to Tribunal: If other measures fail to remedy the situation, the attorney must disclose the client's misconduct to the tribunal, but only to the extent necessary to undo the effects of the false evidence. This should be a last resort.

How can an attorney involve successor counsel in remedial measures for former client perjury?

If the former client has retained successor counsel, the attorney should consider enlisting their aid in persuading the client to withdraw the false evidence or in moving to withdraw the evidence without revealing the client's misconduct. Involving successor counsel might offer a less damaging approach than direct disclosure to the tribunal.

What factors determine the duration of an attorney's ethical obligation to take remedial measures?

The attorney's ethical obligation under ER 3.3 continues until the conclusion of the proceedings. A proceeding is deemed concluded when a final decision has been reached, including appeals, or the time for appeal has expired. However, if the client continues to receive benefits that can be modified based on the false evidence, the proceeding might not be considered concluded.

How can an attorney determine if a proceeding has concluded, thus ending their ethical obligation?

The attorney must consult applicable statutes, rules, and case law to ascertain the current procedural status of the case and determine if it has reached a final conclusion. Factors to consider include whether appeals have been exhausted, whether benefits are still being received, and the potential for reopening or modifying the decision based on the false evidence.

Can an attorney's ethical obligation extend indefinitely in cases where a proceeding could theoretically be reopened?

No. The Committee on the Rules of Professional Conduct recognizes a "practical time limit" for the ethical obligation under ER 3.3. While a proceeding might theoretically be reopened at a future date, an attorney's duty ends when the case reaches its initial conclusion, even if the possibility of future modification exists.