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Opinion No. 11-60

Duties of Attorney in Office of Legal Services

QUESTION

The Office of Legal Services is created and operates under Tenn. Code Ann. §§ 3-12-101, et seq. Is an attorney in that Office required to reveal the name of a legislator who requested certain language in a bill, resolution, or amendment?

OPINION

No. Under Tenn. Code Ann. § 3-12-106(a), the director and members of the legal staff of the Office of Legal Services must maintain the confidentiality of communications with each member of the General Assembly, except as otherwise provided by the rules of either House. The current rules of the House and Senate do not provide otherwise.

ANALYSIS

This opinion addresses the duties of an attorney in the Office of Legal Services. The question is whether such an attorney must reveal the name of the legislator who requested particular language in a bill, resolution, or amendment.

The Office of Legal Services is created and operates under Tenn. Code Ann. §§ 3-12-101, et seq. The Office, among other duties, prepares and assists in the preparation of proposed legislation and amendments, and provides legal opinions upon request to members of the General Assembly. Tenn. Code Ann. § 3-12-101(2) and (3). Tenn. Code Ann. § 3-12-105 differentiates between the Office's records which are public, and those records which are not, stating:

> (a) All books, papers, records, and correspondence of the office of legal services pertaining to its work shall be kept in the office of legal services and all such materials are public records except:
>
> (1) Intraoffice memoranda made by the director of the office of legal services or the director's staff; and
>
> (2) Work papers and correspondence, including correspondence by electronic mail, with any person receiving service from the office of legal services.

> (b) Such papers and correspondence may become public records whenever the director of the office of legal services or the general assembly shall so order.

(Emphasis added).

Tenn. Code Ann. § 3-12-106 then specifically addresses the privilege afforded communications between the Office's Director/legal staff and each member of the General Assembly, as well as all materials arising out of this relationship. Tenn. Code Ann. § 3-12-106 states:

> (a) The director of the office of legal services and the director's legal staff *shall maintain the attorney-client relationship with each member of the general assembly with respect to communications between the member and the attorney,* except as otherwise provided by the rules of either house of the general assembly.
>
> (b) All materials arising out of this relationship including, but not limited to, proposed bills and amendments, analyses, opinions, and memoranda prepared by an attorney are not public records nor subject to the provisions of title 10, chapter 7, part 5, except as otherwise provided by the rules of either house of the general assembly or when released by the member for whom the material was prepared.

(Emphasis added).

Tenn. Code Ann. § 3-12-106 thus establishes a specific statutory privilege for communications and related material between the Office's Director/legal staff and members of the General Assembly. This privilege constitutes an additional exception to the general rule that materials of the office of legal services are public records, subject to certain enumerated exceptions, under Tenn. Code Ann. § 3-12-105. Furthermore, the specific privilege granted the communications and related material under Tenn. Code Ann. § 3-12-106 may only be waived as set forth in Tenn. Code Ann. § 3-12-106(a), i.e. by the rules of either house of the general assembly, and may not be made public pursuant to the process for other non-public records set forth at Tenn. Code Ann. § 3-12-105(b). *See,. e.g., State ex rel. Maner v Leech*, 588 S.W.2d 534, 539 (Tenn. 1979) (noting that a special provision takes priority over general provisions within the statute).

In sum, under the statute creating the Office of Legal Services, the director and the legal staff must maintain the attorney-client relationship with each member of the General Assembly with respect to communications between each member and the attorney, unless the rules of either House provide otherwise. The current rules of the House and Senate do not provide otherwise.

Given this conclusion, it is not necessary to address the extent to which the broader provisions governing the attorney-client privilege as developed by statute and law would apply to these communications. The attorney-client privilege is rooted in the common law, is codified in Tennessee statutes, and is part of the ethical duty of a lawyer under rules promulgated by the

Supreme Court. *The Tennessean v. Tennessee Department of Personnel,* 2007 WL 1241337 (Tenn. Ct. App. April 27, 2007). Under Supreme Court Rule 8, Rules of Professional Conduct 1.6, a lawyer generally may not reveal information relating to the representation of a client unless the client consents.

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