

NOTICE

The Supreme Judicial Court's Standing Advisory Committee on the Rules of Professional Conduct Invites Comments on Proposed Revisions to the Rules of Professional Conduct (Supreme Judicial Court Rule 3:07)

The Supreme Judicial Court's Standing Advisory Committee on the Rules of Professional Conduct ("Committee") invites public comments on a proposed revision to Comment 3 to Rule 1.6 of the Massachusetts Rules of Professional Conduct (the "Rules"). The revision to this comment is part of the revisions to the Preamble and Scope of the Rules published for comment on October 20, 2020 (the "Current Proposals"), but was inadvertently omitted from Appendixes A-4, B-4-1 and B-4-2 of the Current Proposals. The changes to the comment are intended to preserve the substance of provisions currently in paragraph 7 of the Scope of the Rules, which provisions are revised in the Current Proposals.

Comment 3 to Rule 1.6 of the Rules is proposed to be amended to read as follows:

[3] The principle of client-lawyer confidentiality established by this Rule is broader than the attorney-client privilege and the work-product doctrine. The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. Under applicable law, the attorney-client privilege belongs to the client, not the lawyer. The rule of client-lawyer confidentiality also applies in situations other than those where evidence is sought from the lawyer through compulsion of law. Although these Rules provide lawyers with a limited discretion to disclose client confidences in exceptional circumstances, as a general matter clients reasonably expect that their confidences will not be voluntarily disclosed and that disclosure will be judicially compelled only in accordance with recognized exceptions to the attorney-client and work-product privileges.

The following copy of proposed Comment 3 of Rule 1.6 is marked to show the changes from the current Comment 3 to Rule 1.6:

[3] The principle of client-lawyer confidentiality established by this Rule is broader than the attorney-client privilege (and the work-product doctrine). The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. **The Rule Under applicable law, the attorney-client privilege belongs to the client, not the lawyer. The rule** of client-lawyer confidentiality also applies in situations other than those where evidence is sought from the lawyer through compulsion of law. **Although these Rules provide lawyers with a limited discretion to disclose client confidences in exceptional circumstances, as a general matter clients reasonably expect that their confidences will not be voluntarily disclosed and that disclosure will be judicially compelled only in accordance with recognized exceptions to the attorney-client and work-product privileges.**

The Committee will make its recommendations to the Justices of the Supreme Judicial Court following receipt and review of public comments. Comments are due by February 1, 2021, the same date on which comments are due on the Current Proposals, and should be directed to The Standing Advisory Committee on the Rules of Professional Conduct, c/o Chip Phinney, Deputy Legal Counsel, Supreme Judicial Court, John Adams Courthouse, One Pemberton Square, Boston MA 02108. Comments may also be sent by email to chip.phinney@jud.state.ma.us. Comments received will be made available to the public.