

Case 2: Lawyer-Client Privilege

The Michigan Rules of Professional Conduct forbid lawyers from revealing information received in confidence (information protected by the “lawyer-client privilege” of a client), and similarly from using that confidential information for the advantage of a third person, unless the client consents.

You are a lawyer whose practice is focused almost exclusively on criminal defense. You have been active in the criminal defense bar association for several years, and you represent criminal defendants at both the trial and appellate (appeals court) levels.

One of your clients, Gilbert, age forty, is in prison for murdering a woman named Alice. You represent Gilbert in the appeal of his conviction and life-without-parole sentence. During confidential meetings with Gilbert, he confesses to you that he also murdered Bob, and he acted alone when he did. Although you were not involved with the case of Bob’s murder, you are somewhat familiar with it and know that a man named Enrique was convicted of Bob’s murder and is consequently serving a sentence of life without parole. Enrique’s conviction and sentence were recently reaffirmed after a thorough, years-long appeals process. Unless new evidence comes to light, he will not be able to appeal again.

After you are unsuccessful in challenging Gilbert’s conviction and sentence for Alice’s murder, you speak with him about Bob’s murder. He repeats his confession, this time in more detail, but refuses to consent to your request to reveal the confession on Enrique’s behalf.

Study Questions:

1. Should you reveal Gilbert’s confession, in spite of your professional obligations to respect the privacy of your clients? Is revealing the confession morally required, forbidden, or merely permitted?
2. If you choose to reveal the confession, are you morally obligated to do so openly (regardless of how you may be penalized as a result), or is it permissible to report your tip anonymously?

3. To what extent, if at all, is it morally relevant that your professional code explicitly forbids you from revealing this information, and you will be censured if you reveal it?
4. Are there any actions short of revealing the confession that you ethically ought to take?