

Confidentiality Policy

Sec. 6.4 - Policy on Confidentiality of Client Records

6.4.1 Scope: This policy applies to all employees, interns, and volunteers working at CPCS, regardless of their position or duties. It applies to all confidential information relating to the client and the client's case, whatever its source, and not just to matters communicated by a client to a CPCS employee.

6.4.2 Basis: Although the Massachusetts Rules of Professional Conduct apply only to lawyers, lawyers have a duty to ensure that anyone who works on the legal team understands and complies with the Rules. Rule 1.6 requires that a "lawyer shall not reveal confidential information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted" by the rules. Attorneys have a duty under Rule 5.3 to "make reasonable efforts to ensure that the conduct [of non-lawyers] is compatible with the professional obligations of the lawyer." Managers, supervisors and directors have an additional duty to "make reasonable efforts to ensure that the firm (CPCS) has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer." Lawyers are responsible for the conduct of a non-lawyer if "the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (if) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action."

Lawyers have a duty to know and understand the rules applicable to confidentiality, privilege and the work product doctrine.

6.4.3 Rationale and Definitions: Maintaining the confidentiality of information regarding clients and their cases is crucial to our mission.

6.4.4 Confidential information “consists of information gained during or relating to the representation of a client, whatever its source, that is: (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the lawyer has agreed to keep confidential.

6.4.5 Confidential information does not ordinarily include (i) a lawyer’s legal knowledge or legal research or (ii) information that is generally known in the legal community or in the trade, field or profession to which the information relates.” Mass. R. Prof. Conduct 1.6, Comment 3A.

6.4.6 What is included: Confidential information includes, but is not limited to, notes, police reports, investigation reports, and social service reports even if the reports are part of a public record, such as pleadings or court records, and includes identifying anyone as a client unless the information about the client is widely known.

6.4.7 Consent to Release Confidential Information: Confidential information includes information from all sources, if it is gained during or in relation to the representation.

Confidential information should not be shared with anyone outside of CPCS (including spouses), unless the client gives **informed consent** to the release of the information or if the release of information is impliedly authorized by the representation.

6.4.8 Consent to Use Outside Expert, Investigator, Other Professional: After consultation with a client, a lawyer may choose to engage an expert, investigator or other professional who

is not a CPCS staff member. Before the lawyer reveals any confidential information, the outside professional should execute an engagement letter which includes a provision prohibiting him/her from revealing any confidential information to anyone not specified in the engagement letter. See Addendum A for a sample engagement letter.

6.4.9 If someone from outside of CPCS requests information about a case, they should be directed to the attorney responsible for the case. It is the lawyer's responsibility to determine if any information should be released to a third party and to secure the client's informed consent, if needed, before the information is released.

6.4.10 Even within CPCS, information about a client's case should not be generally shared.

Comment 5 to Rule 1.6 allows that "[l]awyers in a firm may, in the course of the firm's practice, disclose to each other confidential information relating to a client of the firm, unless the client has instructed that particular confidential information be confined to specified lawyers."

Implicit in this comment is that confidential information should only be shared with other staff (lawyers and non-lawyers) if it furthers the representation of the client.

6.4.11 Lawyers have an obligation to be familiar with the various rules of court and statutes that apply to disclosure of information about a particular case such as those that apply to mental health, care and protection, delinquency and youthful offender cases.

6.4.12 For the purposes of this policy and to ensure compliance with ethical standards, the following guidelines shall be followed. If an employee has questions about the policy or its application to a particular situation, the employee shall review the questions with a Supervisor, Attorney-in-Charge, Managing Director, Deputy Chief, Director, or the General Counsel.

6.4.13 Guidelines

- ✓ Assume that everything we learn about a client and a client's case is confidential, including whether an individual is a client of CPCS.
- ✓ Do not discuss confidential information or any information about a case with anyone outside of CPCS unless allowed by this policy, the Massachusetts Rules of Professional Conduct, state and federal law.
- ✓ Within CPCS, do not discuss confidential information with other employees unless they are working on the case, it is related to your work at CPCS, or you are seeking advice on how to handle a case.
- ✓ Help ensure that clients understand the nature, limitations, and scope of confidentiality.
- ✓ Advice regarding the nature, limitations, and scope of confidentiality should only be provided by an attorney.
- ✓ Prevent the re-release of medical records or other information protected by the Health Insurance Portability and Accountability Act (HIPAA). When in doubt, you should check with your Supervisor, Attorney-in-Charge, Managing Director, Deputy Chief, Director or the General Counsel. Assume the information is protected unless you can confirm that it is not protected. There are a number of state and federal laws limiting access to information, such as CORI records, personnel files, and personally identifiable information.¹

¹ Personal information under Massachusetts law includes "first name and last name or first initial and last name in combination with any one or more of the following data elements that relate to such resident: (a) Social Security number; (b) driver's license number or state-issued identification card number; or (c) financial account number, or credit or debit card number." 201 C.M.R. 17.02.

- ✓ Information about a client or a client's case cannot be released to individuals outside of CPCS without the approval of the responsible attorney and a properly signed authorization to release, unless release of the information is implicit for effective representation. A copy of any such release shall be kept in the client's file. When in doubt about whether to release information, ask the attorney responsible for the case.
- ✓ Do not disclose information about deceased clients. Confidentiality survives death.
- ✓ Protect all confidential information including case notes and electronic records, especially information transmitted to others by email or facsimile and information contained on computers. All records written or electronic should be stored in secure locations. See related policies on computer usage, electronic mail, and cloud storage.
- ✓ Do not discuss client information by communicating with or about a client in public or semi-public areas such as hallways, waiting rooms, non-private offices, elevators, and restaurants.
- ✓ Do not disclose facts on list serves, email lists, or during public presentations that will allow the audience to identify our clients. Do not disclose facts or refer to any case information on any social media platform including Facebook and Twitter.
- ✓ When in doubt, ask a direct supervisor. If that person is not available, ask another manager or supervisor with legal training.

6.4.14 This policy applies to lawyers and non-lawyers, including social service advocates, social workers, investigators and all support staff because they are all part of the legal team. This policy is meant to ensure that all employees, volunteers, and interns, and not just the attorneys

working for CPCS, comply with Rule 1.6 of the Massachusetts Rules of Professional Conduct and safeguard confidential information regarding our clients and their cases.

Note: Lawyers who leave CPCS employment may, subject to the limitations of the Rules, disclose confidential information “to detect and resolve conflicts of interest arising from the lawyer’s potential change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.” Mass. R. Prof. C. 1.6(b)(7).

SAMPLE ENGAGEMENT LETTER

RE: Engagement Letter

Dear <>:

I have been assigned to act as counsel for <> with respect to a <> matter currently pending in <>. As part of the defense I have determined that there is a need for [expert/investigative/other] assistance and advice in the course of representing <>. Because my client is indigent I must obtain funds to pay for your services by court order.

I have agreed to engage you under the following terms and conditions:

1. You will review and <> as may be necessary to [render an expert opinion/provide <> services] about certain issues to be further identified. You have agreed to render your services at an hourly rate of \$_____, subject to the prior approval of the court and CPCS. Your work shall commence upon the execution of this engagement letter.
2. My office will provide you with the necessary background information and documents relevant to this matter. If the results of your review and analysis of this material yields information that may be helpful to the defendant, you may be called upon to testify.
3. You have represented that you have had no prior involvement in this matter. You have further represented that you have not and will not perform any services for anyone else involved in or connected with this case without my prior written agreement.
4. You will communicate the results of your review and analysis directly and only to me. Your work, unless and until you are called upon to testify, shall be performed solely at my request and is to be considered the highly confidential work product of CPCS. You have agreed not to disclose the results of your work to any other person or entity at any time without my prior written approval.
5. You will not disclose any report or other material, its existence, its contents, or any results of your work or analysis to any other person or entity at any time without my prior written approval. Any and all documents or other information shown or otherwise made available to you in connection with your work shall remain the property of CPCS. You will retain custody of such documents only to the extent necessary and for the period necessary to perform assignments pursuant to this engagement.
6. You will notify me immediately and prior to responding to a request by anyone other than me or someone assisting with the case on my behalf to question you about the

existence or results of your work, or to examine, inspect, subpoena, or seize any documents or records relating to your work. You will respond to such a request only at my specific direction or in compliance with the final order of a court of the highest appellate jurisdiction.

7. All information received by you and/or generated by you during this engagement and in connection therewith shall be safeguarded and kept strictly confidential so as to protect the attorney-client privilege and work product doctrine that attaches to such information. Any disclosure whatsoever will be made by you only upon express written waiver of the client (regarding attorney-client privilege) and me or upon a court order following all rights of appeal. Unless otherwise authorized, all of the information relating to the client shall be deemed to be confidential client information and you have no authority to disclose any of this information to any third party.
8. It is intended and agreed that any communications made to you by CPCS in connection with your work pursuant to this engagement letter, and any communications made by you to CPCS in connection with this matter shall be privileged to the fullest extent permitted by law.
9. Additionally, it is intended that any communications made by and between you and <> will be made in connection with your work pursuant to this engagement letter. It is not to be construed in any way that any such communications are a waiver of the attorney-client privilege or work product doctrine.
10. This engagement shall be deemed by CPCS and you to have taken effect as of the date you were first contacted about this matter by me.

Very truly yours,

<>

ACCEPTANCE

I, _____, hereby agree to all the terms and provisions noted above.

By: _____ Date: _____