

It's a Privilege Not a Right, The Crime-Fraud Exception to the Attorney Client Privilege, by Jack Kallus, Esq. & Labeed Choudhry, Esq., 2-15-2023

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by attorneys Jack Kallus and Labeed Choudhry

On February 18, 2011, Mark Arthur Ciavarella Jr. was found guilty of racketeering by a federal jury.¹ Ciavarella was involved in a scheme known as “Kids for Cash” and was sentenced to 28 years in federal prison.² On June 27, 2011, Rod Blagojevich was found guilty of 17 federal charges related to corruption and spent almost eight years in prison. On May 11, 2009, Marc Stuart Dreier pled guilty to eight charges of fraud in federal court.³ Dreier’s Ponzi scheme included an attempt to sell more than \$950 million in fictitious promissory notes and he was subsequently sentenced to 20 years in federal prison. On July 14, 2022, Alex Murdaugh was indicted by a grand jury in the murder of his wife and son.⁴ Murdaugh had been, and continues to be, under investigation for financial crimes in the millions of dollars at the time of the murder. On January 27, 2010, Scott W. Rothstein pled guilty to five federal counts.⁵ Rothstein ran a \$1.2 billion Ponzi Scheme and was subsequently sentenced to 50 years in federal prison. On August 21, 2018, Michael Cohen pled guilty to eight federal counts including tax fraud and bank fraud.⁶ Cohen was sentenced to three years in federal prison.

The individuals that committed these egregious frauds were not people that were living on the edge of society. Their shared profession granted them a veneer of respectability that they fully exploited. All these individuals were at one time or another well-known attorneys. Many would have argued that they would be the last people that would ever commit any type of fraud. Perhaps that was the very thing that allowed these frauds to remain undetected for so long because no person, or group of people, is completely above reproach. These individuals used their position as attorneys, and in the case of Ciavarella, as a Pennsylvania State...

Conclusion

In the US legal system, the Courts not only serve as neutral arbiters of justice but are also instrumental in maintaining the integrity of the legal profession and in regulating lawyers. Courts are required to protect society at large from unscrupulous lawyers by ensuring that lawyers do not use their background to perpetrate crimes and frauds. The Crime-Fraud exception is a powerful tool in ensuring that the crimes and frauds committed by unscrupulous lawyers are not hidden behind the shield of the Attorney-Client privilege. Courts must apply the exception without hesitation when a proper showing has been made by the party seeking discovery so that all claims of crimes or fraud involving attorneys are adjudicated on the merits. Failure to do so perpetuates injustice and erodes the public’s trust in the legal system.

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