

BAR ASSOCIATION OF ERIE COUNTY

COMMITTEE ON PROFESSIONAL ETHICS

Opinion 10-02

Topic: Disclosure of confidential information

Digest: A lawyer who obtains information from a prospective client concerning the physical well being of the client's adult parents may disclose such information in order to protect the physical well being and safety of the parents.

Rules: 1.18, 1.6(b)(1).

QUESTION

May a lawyer, who obtains information from prospective clients concerning risks of physical harm and well being to the client's elderly parents at the hands of a sibling, but who is not later retained, disclose that information in an effort to seek protection for the elderly parents?

FACTS

The lawyer was approached by several adult children of two elderly parents. They described what they believed to be a situation of elder abuse at the hands of another sibling, including financial, emotional and physical abuse. Due to disagreements among the siblings, the lawyer has not been retained.

OPINION

Subject to exceptions not relevant here, Rule 1.18 of the New York Rules of Professional Conduct expressly provides that

"(b) even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation...."

Rule 1.6 directs that a lawyer may not knowingly reveal confidential information, which is defined in the Rule as "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 client has requested be kept confidential." Given the details imparted by the prospective clients to the lawyer, such information likely would be characterized as "confidential information" under the Rule.

The enactment of the Rules of Professional Conduct in 2009 added a new provision, at Rule 1.6(b)(1) which permits a lawyer to ". . . reveal or use confidential information to the extent that the lawyer reasonably believes necessary: (1) to prevent reasonably certain death or substantial bodily harm..." If the information, therefore, does not fall within the definition set forth in Rule 1.6, then it is not "confidential" and may be disclosed. If, however, the information can be deemed "confidential", and if the lawyer "reasonably believes" that the information will "prevent reasonably certain . . . substantial bodily harm", the information, though "confidential", nonetheless may be disclosed by the lawyer.

CONCLUSION

A lawyer who receives "confidential information" from a prospective client may disclose that information if the lawyer reasonably believes it necessary in order to prevent reasonably certain death or substantial bodily harm.