

Utah Ethics Opinions

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Utah State Bar

Ethics Advisory Opinion Committee

Opinion No. 95-06

Approved July 28, 1995

Issue: When an attorney has reason to believe a person who is not a client has abused a child and the information upon which the belief is based derives from the attorney's representation of a client, may the attorney report the suspected abuse over the client's objection if the attorney believes that making such a report is required by law?

Conclusion: Yes.

Discussion: Rule 1.6 of the Utah Rules of Professional Conduct states in pertinent part:

(a) A lawyer shall not reveal information relating to representation of a client except as stated in paragraph (b), unless the client consents after disclosure.

(b) A lawyer may reveal such information to the extent the lawyer believes necessary (4) [t]o comply with the Rules of Professional Conduct or other law.

Rule 1.6(a) embodies a tenet central to the practice of law: Information gathered in the course of representing a client shall be kept confidential unless and until the client waives the confidence. The requirement of confidentiality imposed by Rule 1.6(a), however, is subject to the exceptions set forth in Rule 1.6(b).

Rule 1.6(b)(4) provides that an attorney "may" reveal otherwise confidential information if the attorney "believes" such disclosure is required by law. "May" is permissive language, not mandatory, and defines areas in which the lawyer may exercise discretion. (fn1) "Believes" refers to what the attorney actually supposes to be true, and such a belief may be based upon circumstantial evidence. (fn2)

Utah law provides that any person having reason to believe that a child has been abused or neglected "shall immediately notify" certain officials. (fn3) Thus, if an attorney believes a child has been abused or neglected, the attorney *may* notify certain officials of the attorney's belief without violating the

Utah Rules of Professional Conduct.

This opinion does not address whether the child abuse-reporting law or other statutes mandating disclosure of certain information, (fn4) may *compel* an attorney to reveal a client confidence in violation of the Utah Rules of Professional Conduct and the professional discretion recognized by those Rules. That issue requires determination of a legal duty, as opposed to an ethical duty. Its answer, therefore, lies beyond the purview of this Committee. (fn5)

Footnotes

1. Utah Rules of Professional Conduct, "Scope."

2. *Id.*, "Terminology."

3. Utah Code Ann. § 62A-4a-403(1) (Supp. 1994).

4. *See, e.g.*, Utah Code Ann. § 26-6-6 (1995) (duty to report persons suspected of having communicable disease to authorities).

5. The Comment to Rule 1.6 declares that a "presumption should exist" that other laws do not supersede the requirements of Rule 1.6. The prefatory section of the Rules entitled "Scope" further advises:

The fact that in exceptional situations the lawyer under the Rules has a limited discretion to disclose a client confidence does not vitiate the proposition that, as a general matter, the client has a reasonable expectation that information relating to the client will not be voluntarily disclosed and that disclosure of such information may be judicially compelled only in accordance with the recognized exceptions to the client-lawyer and work product privileges.

The Scope, however, also warns that "nothing in the Rule[s] should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such a duty."

Rule Cited:

1.6