



The North Carolina State Bar

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April 1, 2005

Ms. Angela Kreinbrink
The Elder Law Clinic
Wake Forest University School of Law
Sticht Center, Medical Center Boulevard
Winston-Salem, NC 27157-1207

EA 2394: Disclosure of Confidential Information

Dear Ms. Kreinbrink:

I apologize for the delay in responding to your letter of February 15, 2005, relative to the above-referenced case. In my phone call to you in February following the receipt of your letter, I provided you with oral advice and indicated that we would provide you with a written confirmation of that advice. Upon reflection, I have determined that we can provide the following formal ethics advisory opinion.

Inquiry:

Law Student participates in the Elder Law Clinic of Law School and provides limited representation to clients under the supervision of the managing lawyer for the clinic.

Son, an adult, contacted the clinic to request assistance in becoming the appointed guardian for Mom, his mother. Son was asked to bring Mom into the clinic for an appointment with Law Student. At the meeting with Mom at the clinic, Mom was found to be significantly impaired. Son was subsequently asked to come to the clinic. In the meeting with Law Student, Son revealed that he had taken, for personal use, funds that Mom had recently inherited. Law Student and the managing lawyer believe that this information must be reported to Adult Protective Services pursuant to N.C. Gen. Stat. §108A-102(2004) as possible financial exploitation of a disabled adult.

Son may believe that he is a client of the clinic and, if he is, his disclosure to Law Student is confidential information. May Law Student, or the managing lawyer, reveal the information about Son's misappropriation of his mother's funds to Adult Protective Services?

Opinion:

Yes, if the statute requires reporting of this information.

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Whether Son is a client of the clinic depends upon the representations that were made to Son at the time that he contacted the clinic and at the time that he came into the clinic to meet with Law Student. However, the determination of whether Son is a client of the clinic is unnecessary to the resolution of this inquiry because disclosure is permitted under the confidentiality rule, Rule 1.6, even if Son is a client of the clinic and the information he shared is confidential client information.

Rule 1.6(a) prohibits a lawyer from revealing information acquired during the professional relationship with a client unless the client consents, the disclosure is impliedly authorized to carry out the representation, or the disclosure is permitted by one of the provisions in paragraph (b) of the rule. Rule 1.6(b)(1) permits a lawyer to reveal confidential client information to comply with the law or a court order.

RPC 175 is on point. Like the statute requiring a citizen to report suspected elder abuse, N.C. Gen. Stat. §7A-543 requires any person who has cause to suspect that a child is being abused or neglected to make a report to the local Department of Social Services. RPC 175 holds that a lawyer who receives confidential information indicating that a child is being abused or neglected may report that information to DSS as necessary to comply with the reporting statute. The opinion also holds, however, that

[t]he rule clearly places the decision regarding the disclosure of a client's confidential information within the lawyer's discretion. While that discretion should not be exercised lightly, particularly in the face of a statute compelling disclosure, a lawyer may in good faith conclude that he or she should not reveal confidential information where to do so would substantially undermine the purpose of the representation or substantially damage the interests of his or her client.

If Law Student and the managing lawyer conclude that a report should be made to Adult Protective Services, they may so advise Son in advance if doing so would not undermine the purpose of the representation of Mom and might result in Son's voluntary return of the misappropriated funds.

You may rely upon the advice contained in this letter pending its review by the Ethics Committee at its next quarterly meeting in July 2005. Should the committee then decide that my advice should be altered in any material way, you will be notified immediately.

Sincerely yours,



Alice Neece Mine
Ethics Counsel



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July 27, 2005

Ms. Kate Mewhinney
Managing Attorney
The Elder Law Clinic
Sticht Center
Medical Center Boulevard
Winston-Salem, NC 27157-1207

Dear Kate:

On April 1, 2005, I issued an ethics advisory opinion (EA 2394) to Angela Kreinbrink. In the letter I told her that the opinion would be reviewed by the Ethics Committee at its meeting in July. Unfortunately, Ethics Advisory 2394 was inadvertently omitted from the Ethics Committee's agenda in July. Therefore, I will place the advisory on the Ethics Committee's agenda for its meeting in October. In the meantime, you may continue to rely upon the advice contained in the opinion letter. If the committee alters the opinion in any way, I will contact you immediately after the October meeting, otherwise you may assume that the committee approved the opinion.

Sincerely yours,

Alice Neece Mine
Assistant Executive Director