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December 19th, 2007

Informal Opinion 07-11

Proposed Establishment of Youth Legal Clinic

You have requested an opinion concerning establishing a pro bono Youth Legal Clinic wherein certain attorney volunteers in your community can advise its youth under the age of 21 on legal matters that may be of concern to them. You indicate that all communications between a youth and a lawyer connected with the Legal Clinic are to be completely confidential and that nothing can be disclosed or revealed without the youth's permission. You have informed us that the purpose of the Youth Legal Clinic will be to have a group of lawyers experienced in juvenile and criminal matters who will volunteer to assist youth under the age of 21 "in dealing with potential interfacing or confrontation with the police or justice system."

You have asked about any ethical considerations with respect to the issue of disclosure to parents of a youth who is a minor under the age of 18, or to a non-parental guardian of a minor youth when a volunteer attorney provides legal advice to a minor youth.

An attorney's duties of confidentiality are governed by Rule 1.6, and nothing in that Rule suggests that those duties are limited where the client is a minor. Rule 1.6 dictates that "a lawyer shall not reveal information relating to 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 subsection (b), (c), or (d)." Accordingly, unless the youth gives informed consent, or disclosure is impliedly authorized or is permitted by subsection (b) (c) or (d), a lawyer is not permitted to disclose communications from a youth that relate to the providing of legal advice to the youth.

In fact, even if a "client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority...or for some other reason," confidences of the client are still protected by Rule 1.6. *See* Rule

1.14 (a) and (c). Where, however, the attorney reasonably believes that the “client with diminished capacity is at risk of substantial physical, financial, or other harm unless action is taken and cannot adequately act in the client’s own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client,” Rule 1.14(b), the lawyer may, but is not required, to reveal confidences to the extent necessary to take protective action. Rule 1.14(c). The official commentary to Rule 1.14 provides that “such measures could include consulting with family members...” Otherwise, the lawyer must maintain a normal client-lawyer relationship with the minor client. *See Informal Opinion 97-35.*

Unless Rule 1.14(b) or (c) is applicable, disclosure to parents or other guardians is only permitted if the youth gives informed consent. Rule 1.0 (f) provides that informed consent is based on the lawyer’s communicating to the youth adequate information and explanation about confidentiality of communications and knowing waiver of confidentiality by the youth.

The Rules of Professional Conduct do not prohibit the organization a Youth Legal Clinic for which volunteer lawyers will provide pro bono analysis and advice on legal matters of concern to youths.

THE COMMITTEE ON PROFESSIONAL ETHICS

By Wick R Chambers
Wick R. Chambers, Chair