

bodily harm.”⁴ Another exception gives a lawyer the discretion to reveal protected information “to the extent the lawyer reasonably believes necessary to prevent reasonably certain death or substantial bodily harm.”⁵

’s lawyers and social workers, however, anticipate situations where clients disclose cases of physical injury, abuse, child abuse, reportable offenses, or neglect that may not lead to “death or substantial bodily harm.”⁶ Clients may also disclose *past* abuse by *non*-clients. In these cases, ’s lawyers cannot break confidentiality.⁷ This leaves the social workers in a bind.

On the one hand, ’s social workers must follow the lawyers’ ethical obligation to maintain confidentiality.⁸ If they do not, they place the lawyers at risk for sanctions.⁹ On the other hand, the social workers must follow their own obligation to report even if the injury is not serious or life threatening.¹⁰ If they do not, they may face criminal prosecution¹¹ and professional sanctions.¹² In short, ’s lawyers are unclear on how to advise the social workers when a client discloses past abuse or abuse that may not lead to death or substantial bodily harm.

⁴ ER 1.6(b).

⁵ ER 1.6(d)(6).

⁶ Examples include minor physical injury—such as bruising—and surreptitious photographing. *See* A.R.S. § 13-3623(F)(4) (including “skin bruising” under the definition of “physical injury”); A.R.S. § 13-3620(P)(4) (including surreptitious photographing as a “reportable offense”).

⁷ No other exception to confidentiality seems to apply. ER 1.6(c) typically does not apply because either the crime has already occurred or the person that committed the crime is not AVCV’s client. ER 1.6(d)(5) does not apply because lawyers are exempt from Arizona’s mandatory reporting law and do not need to “comply with other law.”

⁸ A non-lawyer, such as a social worker, employed by a law office is bound by a lawyer’s ethical obligations. *See* ER 5.3.

⁹ Lawyers must give non-lawyer employees “appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to the representation of the client[.]” ER 5.3. This duty “clearly encompasses the protection of client confidences communicated to a nonlawyer assistant[.]” *Smart Industries Corp., Mfg. v. Superior Court*, 179 Ariz. 141, 146 (App. 1994).

¹⁰ “An injury need not be serious or life threatening to trigger the reporting obligation. All that is necessary is that the injury meet the statutory definition and that [the] person...have a reasonable belief that the infliction of the injury was non-accidental.” Ariz. Att’y Gen. Op. No. I07-006 at 2 (2007); *see also* *L.A.R. v. Ludwig*, 170 Ariz. 24, 27 (App. 1991) (stating that the threshold for reporting is “low”).

¹¹ A.R.S. § 13-3620(O) (“A person who violates this section is guilty of a class 1 misdemeanor, except if the failure to report involves a reportable offense, the person is guilty of a class 6 felony.”).

¹² Among other things, AVCV’s social workers can face sanctions for “[v]iolating any federal or state law, rule or regulation applicable to the practice of behavioral health.” A.R.S. § 32-3251(16)(ii).

III. The Committee should issue an opinion because this question has not been directly addressed by an ethics opinion, Attorney General opinion, or case law and is of statewide importance.

The Committee, the Attorney General, and the courts have not answered the question that _____ poses.¹³ The (former) Committee on the Rules of Professional Conduct has issued opinions on related issues, such as a lawyer’s duty to report elder abuse¹⁴ and a lawyer’s duty to supervise non-lawyers.¹⁵ It has not, however, directly addressed _____’s question.¹⁶ The Attorney General has also issued opinions on related issues, but has not squarely addressed _____’s question.¹⁷ Arizona’s courts have not offered any guidance either.

Furthermore, this issue may affect many other organizations in Arizona.¹⁸ This is an ethical issue that lawyers and mandatory reporters working all over Arizona may encounter.

IV. Conclusion

_____ respectfully requests that the Committee accept this request for an ethics opinion and offer guidance on this important issue.

Sincerely,

¹³ Other jurisdictions have addressed similar issues. *E.g.*, State Bar of Nevada, *Standing Comm. on Ethics and Professional Responsibility Op. 30* (2005); District of Columbia Bar, *Legal Ethics Comm. Op. 282* (1998); Maryland Att’y Gen. Op. No. 90-007 (1990).

¹⁴ Ariz. Op. 01-02 (2001).

¹⁵ Ariz. Op. 98-08 (1998); Ariz. Op. 01-11 (2001).

¹⁶ The Committee on the Rules of Professional Conduct referred to the issue in a footnote, but did not give an opinion. *See* Ariz. Op. 01-02, fn. 4 (2001) (“In the somewhat analogous context of mandatory child abuse reporting statutes, ethics committees in other jurisdictions have concluded that an attorney may ethically disclose confidential information when disclosure is required by statute.”).

¹⁷ *See* Ariz. Att’y Gen. Op. I05-007 (2005) (discussing the reporting responsibilities of teachers and school volunteers under A.R.S. § 13-3620); Ariz. Att’y Gen. Op. I07-006 (2007) (discussing reporting responsibilities under A.R.S. § 13-3620 generally).

¹⁸ For example, physicians, physician’s assistants, and nurses working in a medical-legal partnership may face this issue. *See* A.R.S. § 13-3620(A)(1) (including physicians, physician’s assistants, and nurses in the mandatory reporting statute).