

January 2015 *Multnomah Lawyer Ethics Focus*

## **Danger Zone: Clients Threatening Harm**

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Many civil practitioners associate the topic of clients threatening harm with criminal law. Although criminal lawyers do indeed confront this difficult circumstance periodically, civil practitioners do, too. Moreover, unlike their criminal law colleagues, civil practitioners who find themselves in this uncomfortable position may never have thought about how to approach it.

Examples include:

- A business lawyer with a financially pressed client who tells the lawyer during a particularly tense negotiating session with a bank over the client's credit line that the client plans to kill the bank's credit manager.
- A family lawyer with a distraught client in the middle of a bitter custody fight and who is already in therapy receives a call from the client telling the lawyer that the client is thinking of committing suicide.
- A personal injury lawyer representing a victim of childhood abuse with a history of depression becomes concerned because the client fails to make a key meeting and doesn't answer the lawyer's calls.

In this column, we'll look at three facets of this always difficult problem. First, we'll survey the exceptions to the confidentiality rule that allow a lawyer to reveal a client's intent to commit a crime or to prevent reasonably certain death or substantial bodily harm. Second, we'll discuss some practical considerations that can come into play in determining a client's intent and in preventing harm. Finally, we'll examine the associated question of whether a lawyer needs to withdraw following a disclosure or other intervention.

### ***Exceptions to the Confidentiality Rule***

Depending on the circumstances, two exceptions to the confidentiality rule may be triggered.

RPC 1.6(b)(1) allows a lawyer "to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime[.]" This exception is a carryover from former Oregon DR 4-101(C)(3) and, by applying to any crime, is potentially quite broad. In practice, RPC 1.6(b)(1) focuses on situations highlighted by our first example where the financially strapped client tells the business lawyer that the client intends to kill the bank credit manager.

RPC 1.6(b)(2), in turn, allows a lawyer to reveal otherwise confidential information "to prevent reasonably certain death or substantial bodily harm[.]" This exception is patterned on ABA Model Rule 1.6(b)(1) and came to us when we moved from the old "DRs" to the RPCs in 2005. Although it includes serious

crimes illustrated by our first example, this exception also embraces situations like our two other examples where the lawyer's own client is the one who is at risk of harm. Comment 6 to ABA Model Rule 1.6 explains that "harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat."

With both, Oregon's exceptions are permissive ("may") rather than mandatory ("shall"). At the same time, Comment 6 to ABA Model Rule 1.6 also notes that even the bedrock principles of lawyer confidentiality may give way to "the overriding value of life[.]"

### ***What Do You Do?***

These are situations that are inherently fact-specific and, as a result, don't come with a ready-made set of instructions. Two general considerations, however, often come into play.

First, it can be critical in assessing the situation to understand your own client. With the financially pressed business client, for example, the lawyer may know—or learn—that the client uses that phrase as way of simply "blowing off steam." If you are uncertain, however, the best course is often to have a direct conversation with the client about your concerns.

Second, consider interventions that either don't necessarily reveal confidential information or limit the extent of the disclosure. With the distraught

family law client, for example, a call to the client's therapist may be an avenue to communicate the concern to a medical professional who is better equipped to take appropriate action. With the personal injury client, in turn, the lawyer might send the firm's investigator out to check on the client or ask the police to do a welfare check.

***Do You Need to Withdraw?***

In a situation where a lawyer has had to inform a law enforcement agency or other third party of a death threat, the attorney-client relationship will likely have been sufficiently affected that withdrawal is the next step. To return to our first scenario, for example, if the lawyer has determined that the client really intends to kill the bank credit manager and has reported the threat to opposing counsel or the police, withdrawal should likely follow.

Where the concern was only shared with another professional to assist the client or did not actually result in a detailed disclosure to a third party, however, the lawyer will often be able to remain. Our second and third scenarios are examples of situations where the lawyer's concerns were shared or addressed in ways that don't necessarily affect the continued attorney-client relationship, and, therefore, don't necessarily require withdrawal.

## **ABOUT THE AUTHOR**

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