

THE PHILADELPHIA BAR ASSOCIATION  
PROFESSIONAL GUIDANCE COMMITTEE  
Opinion 2014-9  
(December 2014)

The Inquirer represents A. When Inquirer met with A several years ago, A advised that she suffered from cognitive impairment and was clear that she intended to commit suicide to avoid entering a demented state and in order to preserve her assets for her family. A's immediate family supports A's wishes. A has since been diagnosed with Alzheimer's Disease.

Inquirer met with A recently to address A's concerns that her family would not be implicated in her decision to commit suicide. The Inquirer advised that she believes the family would not be implicated if they do not assist the client. The Inquirer asks whether there is a duty under Pennsylvania Rule of Professional Conduct ("the Rules") 1.6 about confidentiality to make an attempt to stop A from committing suicide since Inquirer believes that suicide is a crime. Inquirer indicates that A has demonstrated competency at all times with Inquirer.<sup>1</sup>

There are two Rules relevant to this inquiry.

**Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer, provides in pertinent part that,**

...

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

**Rule 1.6. Confidentiality of Information provides in pertinent part that:**

(a) A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

(b) A lawyer shall reveal such information if necessary to comply with the duties stated in Rule 3.3.

(c) A lawyer may reveal such information to the extent that the lawyer reasonably believes necessary:

1. To prevent reasonably certain death or substantial bodily harm.

...

Pursuant to Rule 1.6, Inquirer has a duty to keep confidential the information concerning A's intention to commit suicide. Rule 1.6 only requires disclosure of such confidential

information when necessary to comply with Rule 3.3. Rule 3.3 deals with candor toward the tribunal, and therefore is not relevant to this inquiry. Regarding Rule 1.6c1, the Committee points out that whether suicide or assisted suicide is a crime in Pennsylvania is not relevant to the ethical analysis of the issue presented. The exception to confidentiality as contained in Rule 1.6c1, allows the inquirer to make a disclosure to prevent certain death, but does not require it—the ability to make the disclosure is discretionary with the attorney, and to choose to not do so is not an ethical violation. The Inquirer is under no duty pursuant to Rule 1.6 to disclose information concerning A's intentions. Although such disclosure *may* be made pursuant to 1.6c1, Inquirer has requested guidance only as to *required* disclosures, and the Rules in the situation presented do not require any disclosure. Moreover, as Inquirer states that A has at all times demonstrated competency with Inquirer, the provisions of Rule 1.14, which deal with permissive disclosure of confidential information in certain circumstances involving clients with diminished capacity, are also not relevant to this opinion, although Inquirer is advised that this may change if A's competency status changes.

Although not raised by the Inquirer, the Committee points out that Rule 1.2d is also relevant to the inquiry. Assisting the client with her legal needs is different, separate and apart from assisting her in carrying out her actual suicide. A lawyer can assist the client in answering her questions about the impact of the client's contemplated conduct, without in fact assisting the client in making the decision. This is an important distinction in this situation, as the Rule is meant to allow a complete and open discussion of the consequences of all the proposed conduct by the client, legal or illegal, provided the attorney does not assist the client in doing anything illegal.

Finally, it is beyond the purview of this Committee to opine on substantive law, and consistent with the Committee's charge, the basis for the foregoing opinion is limited to the construction and interpretation of the Pennsylvania Rules of Professional Conduct. However, Inquirer is advised that certain substantive law issues, including criminal law issues, specifically any possible exposure the family may have in this situation, may be implicated by this inquiry. Inquirer should therefore consult with a criminal attorney for guidance on such matters, as well as the status of suicide and attempted suicide as crimes in Pennsylvania.

**Caveat:** The foregoing opinion is advisory only and is based upon the facts set forth above. The opinion is not binding upon the Disciplinary Board of the Supreme Court of Pennsylvania or any other Court. It carries only such weight as an appropriate reviewing authority may choose to give it.

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<sup>1</sup> The Committee is keenly aware that suicide, like many end-of-life questions, is a subject as to which there are deep and competing personal convictions.