

When Working With Lawyers....

Practice Brief: Mandatory Reporting for Social Workers in a Legal Setting in the State of Iowa

The inclusion of social workers in a legal team assisting parents in Children in Need of Assistance cases and other related matters, such as custody or divorce, would greatly benefit the client and improve the likelihood of a successful conclusion to the case. There has been a perceived impediment to a closer collaboration based on the mandatory reporting obligations for social workers and the potential conflict with lawyers' requirements of confidentiality and privilege. As the following analysis will show, it appears that the impediment is either non-existent or sufficiently narrow that with discussion and collaboration an acceptable solution can be achieved when the representation focuses on adult parents.

Applicable rules:

Social workers, just like lawyers, are bound by their Code of Ethics to keep confidential "all information obtained in the course of professional service." Code of Ethics of the National Association of Social Workers (NASW Code) at 1.07(c). Disclosure is permitted under the Code only if necessary to prevent "serious, foreseeable, and imminent harm to a client or other identifiable person." NASW Code at 1.07(c) Likewise the regulations regarding rules of conduct for licensed social workers, found at 645 IAC 282.2, state that "A licensee shall not disclose or be compelled to disclose client information unless required by law, except under the following limited circumstances: (1) If the information reveals the contemplation or commission of a crime. This includes situations in which the licensee determines that disclosure is necessary to prevent serious, foreseeable, and imminent harm to the client or another specific identifiable person."

Lawyers have a similar set of requirements. Rule 32:1.6(a) of the Iowa Rules of Professional Conduct (Iowa Lawyer Ethics Rule) states that "A lawyer shall not reveal information relating to the representation of a client" except in limited circumstances. Lawyers are permitted to disclose when the lawyer "reasonably believes necessary to prevent reasonably certain death or substantial bodily harm." Iowa Lawyer Ethics Rule 32:1.6(b)(1). A lawyer "shall" disclose when the lawyer "reasonably believes necessary to prevent imminent death or substantial bodily harm." Iowa Lawyer Ethics Rule at 32:1.6(c). Lawyers also have an obligation to ensure that those who are employed or retained by a lawyer conduct themselves in a manner consistent with the lawyer's obligations under the code. Iowa Lawyer Ethics Rule 32:5.3.

Under Iowa's mandatory reporting law, social workers have an obligation to report if social workers "in the scope of professional practice or in their employment responsibilities, examines, attends, counsels, or treats a child and reasonably believes a child has suffered

abuse.” Iowa Code Section 232.69(1)(b). If, however, the disclosure is from an adult client, the mandatory requirement to disclose does not apply. The mandatory disclosure relates only to examining, attending or treating a child.

How lawyer and social worker disclosure requirements mesh:

As a general matter, both lawyers and social workers must not disclose client confidences. Iowa Lawyer Ethics Rule 32:1.6(a), NASW Code 1.07(c), and Rules of Conduct 645 IAC 282.2(4)(a). Lawyers are required to ensure that employees follow all requirements regarding confidentiality rules applicable to lawyers. Iowa Lawyer Ethics Rule 32:5.3. As a result, social workers who are employees of a law firm would be required to keep information confidential to the same extent that the lawyer would. Social workers are usually mandatory reporters but when providing services to an adult, as noted above, the mandatory reporting requirements would not come into play. Lawyers are not mandatory reporters. So if the social worker would be permitted, not required, to disclose, when employed by a lawyer, the social worker would generally not be able to disclose without violating confidentiality requirements. Under the licensure rules of conduct, a social worker cannot disclose except in limited circumstances. Those disclosures are not mandatory but permissive, allowing the social worker to be covered by the lawyer’s confidentiality rules.

However lawyers are required to disclose and social workers are permitted to disclose in very similar circumstances regarding serious, foreseeable, and imminent harm. Iowa Lawyer Ethics Rule 32:1.6(c) and NASW Code 1.07(c). Needless to say, a protocol and procedure regarding when those circumstances arise and how to proceed when they do is something that should be thoroughly discussed between the lawyers and social workers in the law firm.

Conclusion:

Social workers are not required as part of their mandatory reporting obligations under Iowa Code Section 232.69 to make a report to the Department of Human Services if the person reporting the abuse to the social worker is an adult. Although reporting in that situation is permissive, lawyer-related confidentiality requirements would limit the ability to report. The Rules of Conduct for licensed social workers permit but do not require disclosure. As a result, a social worker employed by a lawyer would need to adhere to the lawyer’s confidentiality rules, but would also be able to adhere to the social worker Code of Ethics as the criteria for mandatory disclosure is very similar between lawyers and social workers.

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