

Mandatory Reporting and Confidentiality in an Interdisciplinary Legal Team

Commission to Develop a Pilot Program to Provide Legal Representation to Families in the Child Protection System –
October 17, 2022

At the third meeting of the Commission, the following question was posed: *In the context of an interdisciplinary legal team that includes a social worker, what are the requirements for mandatory reporting by the social worker, and how are those requirements managed in the event they conflict with a lawyer's duty to maintain client confidentiality?*

Mandatory Reporting

Maine's mandatory reporting law can be found at [Title 22, section 4011-A](#). The statute requires that certain individuals acting in a professional capacity make a report to the Department of Health and Human Services when that person "knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected or that a suspicious child death has occurred." Included in the list of professionals bound by the law are social workers and family or domestic violence victim advocates; attorneys are not included.

Duty of Confidentiality

Attorneys licensed in Maine are bound by the Maine Rules of Professional Conduct, including [Rule 1.6](#), which relates to the confidentiality of information obtained in the course of representation. The rule states:

a lawyer shall not reveal a confidence or secret of a client unless, (i) the client gives informed consent; (ii) the lawyer reasonably believes that disclosure is authorized in order to carry out the representation; or (iii) the disclosure is permitted by paragraph (b).

Paragraph (b) allows disclosure of otherwise confidential information in limited circumstances including "to prevent reasonably certain substantial bodily harm or death."

The duty of confidentiality applies not only to attorneys, but to their non-attorney assistants, a concept established by [Rule 5.3](#) of the Rules of Professional Conduct. The duty is held by the attorney "having direct supervisory authority over the nonlawyer," who is required to "make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer."¹

Conflict between Duties of the Attorney and the Social Worker

Given that the social worker has a statutorily mandated reporting obligation and the attorney has a duty of confidentiality, it is foreseeable that situations could arise in which the members of an interdisciplinary team comprised of an attorney and a social worker learned information that would appear to trigger the mandated reporting duty of the social worker but did not rise to the level of "reasonably certain substantial bodily harm or death" as required to permit the attorney to breach her duty of confidentiality. Maine statute does not anticipate such a conflict, and no advisory opinions from either the Board of Overseers of the Bar nor the State Board of Social Work Licensure address such a scenario. Therefore, the potential for such a conflict remains absent a change to statute or the Rules of Professional Conduct exempting one of the parties from its professional obligations.

For additional information see:

Alexis Anderson, Lynn Barenberg, and Paul R. Tremblay. "Professional Ethics in Interdisciplinary Collaboratives: Zeal, Paternalism and Mandated Reporting." *Clinical Law Review* 13, (2007): 659-718,
<https://core.ac.uk/download/pdf/71467705.pdf#:~:text=Alexis%20Anderson%2C%20Lynn%20Barenberg%2C%20and%20Paul%20R.%20Tremblay.,IN%20INTERDISCIPLINARY%20COLLABORATIVES%3A%20ZEAL%2C%20PATERNALISM%20AND%20MANDATED%20REPORTING>

Premela Deck, *Ethics – Law and Social Work: Reconciling Conflicting Ethical Obligations Between Two Seemingly Opposing Disciplines to Create a Collaborative Law Practice*, 38 *W. New Eng. L. Rev.* 261 (2016),
<http://digitalcommons.law.wne.edu/lawreview/vol38/iss2/3>.

¹ Rule 5.3 of the Maine Rules of Professional Conduct describes a lawyer's responsibilities regarding nonlawyer assistants. Rule 5.3(a) relates to law firms, while 5.3(b) describes lawyers with direct supervisory authority over a nonlawyer. The latter is cited here, but the former would apply if the social worker and attorney were working in a law firm structure.