

Advisory Opinion 1987-1

This request was made by an attorney who took pro bono assignments from the Lawyer Referral for the Elderly Project. After the lawyer had established an attorney-client relationship with an individual, the attorney learned that the client was suicidal. The client then requested that the attorney draft a will for her and to arrange her affairs.

The question presented by the request concerned ethical responsibilities where the attorney learns of the client's intent to commit suicide. Based upon the facts presented in the letter, the committee reached the following conclusions. In general, a lawyer may not divulge confidential information imparted to him by the client, unless authorized to do so by the client. (DR 4-101(A)). On the other hand, where the client has imparted information that discloses his intention to commit a crime, or where the lawyer, by reason of having such information, may be a party to a fraud or false statement, this general duty is affected by other provisions of the Code.

The committee does not believe that the failure to disclose an intent to commit suicide would constitute aiding in the commission of suicide contrary to NMSA 1978, § 30-2-4 (Repl.Pamp.1984). Nor is the committee aware of other New Mexico criminal laws relating to suicide.

Where the information disclosed by-a client indicates that a crime may be committed, the attorney should examine whether the act is in fact criminal or fraudulent and whether his failure to disclose the information might constitute aiding in the commission of fraud or the crime. The results of that inquiry will determine the duties of the attorney.

If the attorney determines that the act is criminal or fraudulent, there is probably a duty to take some action. At least one opinion has stated that an attorney has a duty to advise the client of the consequences of the act, and to endeavor to prevent a continuance of wrongdoing (see ABA opinion 156 (1936)).

DR 4-101(C) states that an attorney may reveal the intention of his client to commit a crime and the information necessary to prevent the crime. Such language is permissive, rather than mandatory, but there have been several opinions holding that public policy *requires* a disclosure of such information to the proper authorities (see ABA 314 (1965); ABA opinion 202 (1940); ABA opinion 156 (1936)). Because the facts given to us do not indicate the possibility of any crimes or frauds, we do not believe that the attorney has a duty to act.