

# Advisory Opinion 1989-1

## ATTORNEY'S DUTY TO REPORT KNOWLEDGE OF CRIMINAL ACTIVITY

In the course of pursuing a civil claim on behalf of a client, attorney discovers information leading her to believe that the actions of the defendant have constituted serious felony crimes as well as civil wrongs. A settlement of the client's claim has occurred which contains some confidentiality provisions (we have not reviewed this agreement), but attorneys orally agree after the fact that the agreement does not prohibit, claimant's attorney from reporting the defendant to relevant law enforcement authority.

Attorney's question is: Do the Rules of Professional Conduct applicable to New Mexico attorneys require her to make a report of the criminal conduct?

This opinion is limited in scope to criminal acts by persons who are not the reporting attorney's client, and not attorneys. A lawyer's duty regarding wrongdoing by clients or other attorneys is set out at 16-106 B and C and 16-803 NMSA. A similar matter was considered by the American Bar Association Committee on Ethics and Professional Responsibility in Informal opinion 1210 (1972). The Committee said:

“...manifestly a lawyer must by virtue of DR 1-102 comply with any laws relating to compounding of a felony or accessory after the fact. Apart from these considerations, there is a duty on the part of a lawyer as a good citizen to aid in the enforcement of criminal laws validly enacted for the collective protection of society...”

Except for concern about compounding a crime or being an accessory to a crime, a lawyer's duty to report observed or suspected criminal activity is no different from that of any other citizen. one does not become obligated to a different or higher standard of conduct by virtue of qualifying to practice law, or observing criminal activity within the course of practice.

New Mexico does have a law regarding compounding a crime, 30-22-6 NMSA. Because of this, we urge caution in the execution of settlement agreements requiring confidentiality where an attorney representing a party reasonably believes that actions of an opposing party in the controversy have constituted a crime.

In entering an agreement which contains provisions for confidentiality, an attorney should take care to avoid any appearance that the confidentiality provisions are intended to conceal possible criminal conduct.

We do not imply that settlement agreements employing confidentiality provisions are forbidden. It is only when an attorney who is a party to such an agreement suspects that a crime has been committed, and an agreement suspects that a crime has been committed, and an outside observer might believe the terms of the settlement agreement require silence about the criminal activity that we believe a report to law enforcement to be required by the Rules of Professional conduct.