

Silence and Suicidal Clients

By Kevin Murphy, Op-Ed Contributor

What would you do if your client told you that he or she was going to commit suicide? The basis of every fiduciary relationship is complete trust and an obligation to put the best interests of the client before and above the fiduciary's interests. However, if a client tells you that they intend to commit suicide, you will not only confront a serious moral and ethical dilemma, . . . but will have to ask yourself whether **to disclose this information to protect the client's life at your own professional detriment.**

California Rules of Professional Conduct ("RPC") 3-100 governs "Confidential Information of a Client" and the limited situations in which an attorney is authorized to disclose client confidences contrary to the client's desire. In essence, the limited scope of permissible disclosure concerns situations where an attorney "reasonably believes the disclosure is necessary to prevent a criminal act that the member reasonably believes is likely to result in death of, or substantially bodily harm to, an individual." RPC 3-100(B).

On July 20, 2007 the Commission for the Revision of the Rules of Professional Conduct ("Commission") considered a memorandum outlining possible amendments to RPC 3-100. In relation to suicide, the Commission determined that "RPC 3-100 arguably does not permit disclosure to prevent suicide because the rule's exception is triggered only by a criminal act and while assisting suicide may be a crime in California, suicide itself is not a crime." There is an argument that continued representation, after learning of the client's intent to commit suicide, may constitute *assisting suicide* and therefore would place the attorney in a legal "Catch-22;" however, the Commission did not explicitly address the issue which indicates that a failure to disclose a client's intent to kill themselves is not a criminal act in-and-of-itself.

So this leaves the ethical attorney with a moral dilemma: do you protect suicidal clients from themselves to the professional detriment of your law license? Most attorneys would never jeopardize their ability to practice the law, and will be required to sit silently by while waiting for a client to take their own life. This situation leaves an advocate unable to control the course of his clients' representation and interests, a duty that the client hired that specific attorney to protect! Perhaps the client sees the attorney as the final arbitrator for deciding whether the client should live or die. This may seem outrageous until you consider that your dealing with someone who thinks suicide is a reasonable option. Perhaps the client has no other person in whom he can confide, no family to "save him from himself." There are a whole host of potential scenarios, but the current state

of the law ties the hands of the lawyer and takes decision-making authority away from the fiduciary endowed with that responsibility.

The current state of the law seems unreasonable to me and I believe that an additional 'stand-alone' suicide exception to RPC 3-100 should be ratified. While the Commission did explicitly state, "lawyers likely do not possess the training and skill needed to ascertain a client's intent to commit suicide and so the rule should not be changed to permit such disclosures," I find that position irrational and unpersuasive. As lawyers, we have the responsibility to act as "counselors at law." We may not be professional mental health professionals, but most attorneys pride themselves on their ability to recognize sincerity and predict what people will do.

I recognize that authorizing disclosure of confidential information would put attorneys facing these horrific situations in a greater moral dilemma, by requiring attorneys to make their own determination regarding the appropriate course of conduct, but it would restore the decision-making authority inherent in the fiduciary relationship. This is the best possible system to accommodate attorneys confronted with the issue. In some cases, disclosure would be inappropriate and an attorney could rationally and morally decide not to act on the confidential information. In other cases, however, disclosure would be absolutely prudent and an attorney could ethically and morally act to protect the life of a client who needs mental health treatment.