

# ADVISORY ETHICS OPINION 86-03

## **SYNOPSIS:**

Employees of a legal service organization and the organization may warn potential victims of the threats of a client or an applicant for services.

## **FACTS:**

An applicant for service appears at the office of a legal services provider, having been referred by a Vermont court. The applicant has an interview with a staff member in which the applicant appears to be mentally ill, talks about suicide and threatens to kill others. According to the referral information, the applicant has made similar threats at court.

The committee is asked:

- 1) What is the obligation of the individuals who conduct the interview and the organization for which they work to warn the potential victim against whom a client or applicant for service makes violent threats; and
- 2) What steps, if any must the individuals or organization take to determine whether the threats are serious?

## **DISCUSSION:**

DR4-101(D) provides that a lawyer "shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences or secrets of a client . . ." Therefore, the individual who conducts the interview has the same obligation as a lawyer to protect the confidences or secrets of a client. The committee was told that "it is probably fair to assume that the applicant for service considers the information he provides at this interview to be confidential and within the attorney-client privilege." We will assume that to be the case.

DR4-101(C) states that a lawyer may reveal:

- . . . "(3) The intention of his client to commit a crime and the information necessary to prevent the crime."

This is not mandatory, but discretionary. Whether the persons aware of the applicant's threats must disclose the intention to commit a crime and the information necessary to prevent it is a moral rather than an ethical decision. It would require an assessment of the seriousness of the threats, which the person hearing then might well not be trained to perform. One test is if the lawyer, in good faith, believes the client is going to commit a crime, he or she can provide information necessary to prevent it

While the letter that requested the committee's opinion referred to the recent decision of the Vermont Supreme Court in *Peck v. Counselling Service of Addison County*,<sup>1</sup> we have not discussed that case because our role is to give ethical, rather than legal, opinions.

## **CONCLUSIONS:**

The individuals in whose presence threats are made and the legal services organization for which they work may warn potential victims of the threats of a client or applicant for services.

We do not express an opinion on the question of what steps, if any, the individuals or organization must take to determine whether the threats are serious. We believe it to be impossible to fashion a general rule on that issue, given the differences in ability to make such a determination.

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<sup>1</sup> *Peck v. Counselling Service of Addison County*, 146 Vt 61 (1985).