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 **ABA Journal of Labor and Employment Law**

Vols. 1-30 (1985-2015)

 **ABA Juvenile & Child Welfare Law Reporter**
See: **Child Law Practice**

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 **ABA Section of Antitrust Law**
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Practice

Conflicted Over Confidentiality

Indiana ethics opinion says lawyers are not always obligated to report cases of child abuse involving clients **By David L. Hudson Jr.**

Ethics

Indiana law requires anyone "who has reason to believe" that a child is a victim of abuse or neglect to "immediately" make a report to the state department of child services or a local law enforcement agency. Failure to make such a report constitutes a Class B misdemeanor. Unlike similar laws in some other states, the Indiana statute does not specifically exempt lawyers from the reporting requirement.

Nevertheless, the Legal Ethics Committee of the Indiana State Bar Association has concluded that the obligation of lawyers to report cases of child abuse or neglect is not absolute. Instead, the committee says in its Opinion No. 2 of 2015, a lawyer's duty to report is limited by the lawyer's obligation to protect client confidentiality. Rule 1.6 of the Indiana Rules of Professional Conduct states that a lawyer "shall not reveal information relating to the representation of a client unless the client gives informed consent" or one of a limited number of exceptions apply.

(The Indiana rule on confidentiality closely tracks Rule 1.6 of the ABA Model Rules of Professional Conduct. The

situation," says Charles Geyh, who teaches professional responsibility at Indiana University's Maurer School of Law in Bloomington. "First, it pits the public and their elected representatives against the bar by putting the bar in the awkward position of defending the sanctity of lawyer-client confidences in a context where there is likely to be little sympathy for preserving the confidences of child abusers and where the virtue of universal reporting seems obvious. Second, it pits the legislature, which regulates the general public and has imposed a universal duty to report, against the judiciary, which regulates the bar and has imposed significant duties on lawyers not to report."

THE RULES ARE THE RULES

The opinion acknowledges the "conflict between the lawyer's ethical duty to keep silent and the apparent statutory duty to speak." But given the Indiana Supreme Court's "authority over the legal profession, its Rules of Professional Conduct control over conflicting legislation." To conclude otherwise, says the committee, would violate separation-of-powers provisions set forth in the state constitution.

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