



**New York State Bar Association
Committee on Professional Ethics**

Opinion 1189 (05/22/2020)

Topic: Obtaining and using alternate client contact information

Digest: A lawyer may ask a client to designate an alternate contact person, and as needed may contact that person so as to reach the client

Rules: 1.4, 1.6

FACTS

1. The inquirer is concerned about situations in which it becomes hard to reach clients. As an example, the inquirer notes having been “in regular contact with [a client] for a litigation and related settlement negotiations. But since the ongoing COVID 19 pandemic, [the inquirer has] been unable to reach him by email or phone despite multiple attempts.”

2. The inquiry notes that if the inquirer had “emergency contact information” for the client, then the inquirer could call a designated emergency contact person and “introduce myself as the client’s lawyer and inquire whether everything is okay with the client” or “whether something (e.g., a medical issue, death) is impacting my client’s ability to communicate.”

3. Such an inquiry could result in useful information, possibly by revealing that the client had passed away or was hospitalized, or even in the absence of medical developments, by revealing an alternate means for getting in touch with a hard-to-reach client.

QUESTIONS

4. Is it permissible to ask a client to designate a third person contact in case, due to an emergency or for other reasons, the lawyer cannot reach the client directly?

5. If so, when is it permissible to contact the designated person, and in doing so, what may be disclosed?

OPINION

6. The inquirer's goal of maintaining the ability to reach clients is plainly salutary. The New York Rules of Professional Conduct (the "Rules"), including especially Rule 1.4, make clear that adequate communication with clients is essential to proper representation.

7. For there to be adequate communication, the attorney and client need effective means of reaching each other. Thus at the formation of an attorney-client relationship, it is a good idea for the lawyer to request, and for the client to provide, sufficient contact information for the lawyer to reach the client as needed.

8. The contact information for reaching the client may of course include basic items such as telephone numbers and mail and email addresses for the lawyer to use in the first instance. But no ethical rule prevents the sharing of additional "emergency" or alternate methods such as the names and contact information of one or more persons likely to know the status and whereabouts of the client if and when it becomes hard to reach the client directly. In some situations, such as when the lawyer knows family members or business colleagues of the client, there may be little reason to ask for such information. In other situations there may be more reason for the lawyer to make such a request, and it is for the client to determine what information to provide.

9. Unless the lawyer and client have agreed to restrict the lawyer's resort to the alternate channel of communication, no specific triggering event is required before the lawyer may use that channel. In particular, if a time comes when the lawyer's usual means for reaching the client are unavailing, then the lawyer may try to reach the client by communicating with the designated alternate contact person.

10. The inquiry reflects a concern about the possible disclosure of confidential information to the designated alternate contact person. There is little basis for that concern.

11. If a lawyer has occasion to reach out to a client's alternate contact person, the lawyer would not need to disclose much information if any. Perhaps the lawyer might need to explain that the lawyer has reason to communicate with, but has had trouble reaching, the client. That minimal information should usually suffice, because presumably the person designated by the client would be sympathetic to the lawyer's need to communicate. Indeed, it would be a good practice for the client to have discussed these matters with that person at the time of the designation.

12. Typically, that minimal information would not be confidential, because it is not privileged; it is unlikely to be embarrassing or detrimental to the client if disclosed; and the client, far from having requested that the information be kept confidential, accepted that the lawyer may have reason to disclose it to the alternate contact person designated by the client. *See* Rule 1.6(a) (definition of “confidential information”).

13. Admittedly it is possible to imagine scenarios that could implicate confidentiality issues. For example, the designated contact person, as a condition for the requested help, could demand to be told what information the lawyer needs to discuss with the client. Perhaps a more common scenario would be one in which embarrassment or detriment could result from the mere fact that the client was represented by a particular lawyer, such as one with a specialization in criminal law or divorce.

14. In those kinds of cases, the lawyer would have to consider whether the information to be disclosed with the designated contact is confidential under Rule 1.6(a); whether under Rule 1.6(a)(1) the client expressly consented to disclosure as part of the designation; whether there is implied authorization to disclose under Rule 1.6(a)(2); and whether there are any other applicable exceptions under Rule 1.6(b). But apart from such scenarios, which seem unlikely to occur very frequently, the lawyer will not need to engage in this analysis.

15. Our conclusion that a lawyer may communicate with a designated alternate contact person should not be taken to imply that a lawyer is stymied when the client has not made such a designation. We have addressed the inquirer’s question, which is specifically about a designation by the client. But even in the absence of such a designation, a lawyer may have reason to try to reach a client who does not answer to the usual methods. If the lawyer knows or can learn of third persons who might have information about the client’s status or whereabouts, the lawyer could contact such third persons and, as discussed above, could inquire about the client without disclosing confidential information.

16. The permissibility of contacting third parties in the absence of a designation does not undercut the possible value of discussing the matter and making a designation when the lawyer is retained. As a matter of best practices rather than ethical obligation, and depending on the circumstances, there could be value for the lawyer and client to agree on communication procedures in a variety of situations, including emergency contacts and the circumstances that would lead the lawyer to use them, and to update such procedures as appropriate, including

revocation of the designation if at any time the client should so desire. Such consultation may be especially valuable when the client would be reluctant for others to know about the very fact of the representation.

CONCLUSION

17. A lawyer, so as to protect the ability to reach and communicate with a client, may ask the client to designate a person for the lawyer to contact in the event the lawyer is unable otherwise to reach the client.

18. In the event the lawyer is unable to reach the client using ordinary means, the lawyer may, in most circumstances, contact the person designated by the client and may disclose that the lawyer has reason to reach the client but has been unable to do so.

(13-20)