



# NEW YORK STATE BAR ASSOCIATION

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

### **Opinion 1282 (07/07/2025)**

**Topic:** Disclosing Confidential Information to Non-Legal Staff

**Digest:** A New York lawyer working in another state for a non-profit organization that operates both an immigration legal clinic and a shelter for non-citizens may not share information gained during or relating to the legal clinic's representation with the shelter's nonlawyer staff unless (1) the information is not privileged and the disclosure would not be embarrassing or detrimental to the client; (2) the client gives informed consent to the disclosure; or (3) the disclosure advances the best interests of the client and is reasonable or customary under the circumstances.

**Rules:** 1.0(j), 1.6(a), 8.5(a) & (b).

### **FACTS**

1. The inquirer — a lawyer licensed exclusively in New York State — works outside New York in an immigration legal clinic operated by a non-profit organization. The non-profit organization also operates a shelter and provides various support services to non-citizens. When a new person arrives at the shelter, the legal clinic conducts a legal intake. According to the inquirer, the legal clinic operates under a “general directive” not to share information from the legal clinic with nonlawyers on the shelter's staff – but following this directive is difficult because the shelter staff “needs information from the legal clinic to assist residents.” For example, after the legal intake, the immigration clinic typically sends the shelter staff an email outlining the forms of legal relief available to the new shelter resident and the expected timetable for providing the legal services needed to secure those forms of relief.

### **QUESTION**

2. May a New York lawyer working for an immigration legal clinic outside New York disclose client information to nonlawyer staff at a shelter that houses the legal clinic's clients?

### **OPINION**

3. Since the inquirer is a lawyer who is licensed exclusively in New York state but practices in another state, we must first determine—as a threshold matter—which jurisdiction's professional responsibility rules apply to the inquirer's conduct. Under Rule 8.5(a) of the New York Rules of

Professional Conduct (the “Rules”), “a lawyer admitted to practice in this state is subject to the disciplinary authority of this state, regardless of where the lawyers’ conduct occurs.” Under Rule 8.5(b)(2)(i), “if the lawyer is licensed to practice only in this state” (which is the case here), then the New York Rules apply to the lawyer’s conduct.

4. It is beyond our committee’s purview to consider whether the disciplinary authority of the state in which the inquirer is practicing would instead apply that other state’s rules to the inquirer’s conduct. It is also beyond our committee’s jurisdiction to determine whether the inquirer’s practice of law in that state is authorized or unauthorized, because that is a question of law.

5. New York Rule 1.6 defines “Confidential information” as “information gained during or relating to the representation of a client, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the client has requested be kept confidential.” Rule 1.6(a) bars a lawyer from knowingly revealing confidential information, or from using such information for the advantage of a lawyer or a third person, unless “the client gives informed consent, as defined in Rule 1.0(j)” or “disclosure is impliedly authorized to advance the best interests of the client and is either reasonable under the circumstances or customary in the professional community,” or the disclosure is permitted by Rule 1.6(b), which lists various exceptions to the duty of confidentiality.

6. Here, the information ascertained by the inquirer during the legal intake pertaining to the forms of relief available to the shelter resident (the immigration clinic’s client) will nearly always meet the definition of “confidential information.” The information will normally be “protected by the attorney-client privilege” and may involve information that is “likely to be embarrassing or detrimental to the client if disclosed.” The confidential information is likely to be disclosed because the nature of relief available in immigration court is often tied to sensitive personal information, such as whether an individual has been subjected to human trafficking, has been raped, or holds certain political beliefs. Thus, disclosing to the shelter’s nonlawyer staff the forms of relief available to the shelter resident may, under the circumstances, require or anticipate the disclosure of information likely to be embarrassing or detrimental to the client. Disclosing the timetable for likely relief is less likely to be embarrassing or detrimental to the client, but in some cases such disclosure might provide clues to I.C.E. about actions to be taken on behalf of the client, so such disclosure could be detrimental to the client.

7. Thus, whether the information gained during intake is “confidential information” involves a case-by-case analysis of that information. *See* N.Y. State 1059 (2015) (whether disclosure of information about the client’s understanding of immigration proceedings “would be embarrassing or detrimental to the clients depends on the context and precise nature of the information involved.”).

8. Before disclosing confidential information to the shelter’s nonlawyer staff, therefore, the inquirer must find an exception to the duty of confidentiality. One exception is to seek the client’s informed consent to disclose the information. *See* Rule 1.0(j). For consent to be informed, the inquirer must make full disclosure of “information adequate for the person to make an informed decision, and after the lawyer has adequately explained to the person the material risks of the proposed course of conduct and reasonably available alternatives.” *Id.* That discussion should include the impact of the disclosure on the attorney-client privilege (such as whether disclosure will waive the privilege). Additionally, the client’s consent must be voluntary. N.Y. State 1059;

N.Y. State 490 (1978). Notably, lawyers providing services to indigent clients “should be particularly sensitive” to their clients’ vulnerable position; and requests for consent to disclosure “should be made only under circumstances where the staff is satisfied that their clients could refuse to consent without any sense of guilt or embarrassment.” N.Y. State 490.

9. Finally, if a minor is involved, the inquirer will need to ascertain whether the individual is “capable of understanding the risks of disclosure and of making a reasoned judgment.” N.Y. State 1059 (discussing the sensitive inquiry required to determine whether a minor is capable of providing informed consent).

10. Alternatively, confidential information may be disclosed pursuant to Rule 1.6(a)(2) if disclosure would “advance the best interests of the client and is either reasonable under the circumstances or customary in the professional community.” The inquirer asserts that the disclosure of the relief sought on behalf of shelter residents and the timing of the relief would advance the best interests of the clients by helping the shelter staff assist the residents. If such disclosures are designed to advance the best interests of these clients and if it is reasonable or customary under the circumstances to make such disclosures, then the disclosures could be justified as “impliedly authorized” under Rule 1.6(a)(2).

11. Rule 1.6(b) sets forth a number of other exceptions to the duty of confidentiality, but none of them apply to the inquirer’s question so we will not elaborate on them.

## **CONCLUSION**

12. A New York lawyer working in another state for a non-profit organization that operates both an immigration legal clinic and a shelter for non-citizens may not share information gained during or relating to the legal clinic’s representation with the shelter’s nonlawyer staff unless (1) the information is not privileged and the disclosure would not be embarrassing or detrimental to the client; (2) the client gives informed consent to the disclosure; or (3) the disclosure advances the best interests of the client and is reasonable or customary under the circumstances.

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