

Ethics Opinion 2022-02

Question Presented: What should a Lawyer do if a third party is interfering with the Lawyer's communication with the Client and if the Lawyer is not receiving sufficient information to believe the Lawyer is being candid with the Court about the facts?

Short Answer: The Lawyer must act to remove the interference. If that cannot be accomplished, Lawyer must withdraw from representation; and the Lawyer should not make knowingly false statements to the Court.

Rules Implicated: 1.4 and 3.3

FACTS

Lawyer provides services to the County on a contract basis. Lawyer assists individual Petitioners with preparing involuntary commitment (IVC) petitions for people who believe their friends or family members need the protection of an IVC. In this scenario, the County pays the Lawyer, but the Petitioners are the Clients.

The County also pays a Facility that is not Lawyer's client to be involved with the process, including evaluating the subjects of the IVC petitions. Lawyer believes that standard procedures the Facility has implemented interfere with Lawyer's communication with the Lawyer's Clients, i.e., the Petitioners. Lawyer also believes the Facility is failing to follow statutorily-mandated procedures for IVC matters and is not providing Lawyer with sufficient information regarding its evaluations to enable Lawyer to provide full, complete, and accurate information to the Court regarding the petitions.

Lawyer inquires whether Lawyer can or must tell the Facility to follow proper procedures and whether Lawyer can continue to provide services on the IVC matters when Lawyer believes the lack of cooperation and information from the Facility is interfering with the attorney-client relationship with the Petitioners, and is preventing the Lawyer from being able to know the Lawyer is being candid with the Court.

ANALYSIS

Whether Lawyer is correct that the Facility is failing to follow proper procedures or failing to provide sufficient information for Lawyer to be candid with the Court are questions only the Lawyer can answer. For this opinion, the Committee is assuming Lawyer is correct on both points, subject to further discussion below.

The Facility is not a client, and the Lawyer does not appear to believe the County is a client, despite the County paying for services. This belief is not unreasonable under the circumstances, so the Committee will also assume the Lawyer is correct that the only Clients are the Petitioners.

Under Rule 1.4 regarding Communication, Lawyer must take necessary steps to communicate with the Petitioners effectively. If Lawyer believes that the Facility is impairing communication

with the Petitioners, Lawyer must tell the Facility that is the case and ask the Facility to stop. If the Facility continues to interfere with communication, the Lawyer should approach the County about the issue, and note that the Facility's policies are interfering with the Lawyer's attorney-client relationships with Petitioners. If neither of these approaches is effective, the Lawyer should tell the County that Lawyer will have to withdraw if the Facility does not stop interfering with Lawyer's communications with the Petitioners, and may consider telling the County that subsequent attorneys retained by the County will be in the same quandary until it is solved. If this is unsuccessful, then the Lawyer must withdraw from further representation.

Rule 3.3 regarding Candor to the Tribunal prohibits Lawyer only from knowingly making false statements to a court or assisting a client with making statements the Lawyer knows to be false. Lawyer is concerned that the information Facility is providing is sufficiently lacking that Lawyer is failing to be candid with the Court during IVC matters. This uncertainty is not within the ambit of Rule 3.3. Attorneys sometimes have to appear before a court and advocate for clients while knowing or suspecting they lack complete information. Here, as long as the Lawyer's lack of information does not lead Lawyer to knowingly make a false statement of fact, e.g., that the Lawyer knows something to be accurate, when that is not the case because of the lack of information, the candor rule isn't implicated.

That said, if the Lawyer is in a position of having to respond to an inquiry from the Court that may result in a knowing false statement by the Lawyer because of the lack of information from the Facility, the Lawyer's only duties in the scenario as presented are to the Petitioners and the Court. Lawyer must in that case disclose that Lawyer lacks the information needed to answer the Court's inquiry, and is free to tell the Court that the Facility has not provided the necessary information (assuming that is the case).

CONCLUSION

If Lawyer believes a third party is interfering with the attorney-client relationship, the Lawyer must take all reasonable steps to remove that interference and, if unsuccessful, must withdraw from the representation. The Lawyer is not failing to be candid with the Court solely because Lawyer believes information about the case is lacking but must be truthful and candid with the Court and disclose that the information is lacking if the Court asks.