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**From:** Arlington, Erika  
**Sent:** Monday, February 03, 2020 12:54 PM  
**To:** Attorney Ethics Advisory Committee  
**Subject:** Comment re: EO19-0003

I note that this Ethics Opinion was requested by lawyers working in an agency that provides legal and social services to victims of crime. However, in phrasing the "Issue Presented" the opinion encompasses any lawyer supervising a non-lawyer professional with a statutory obligation to report offenses against minors. If the opinion were limited to the situation of services for crime victims I would have no comment. However, because the opinion has a potentially much broader scope I ask you to consider the issues described below.

My agency represents both parents and children in dependency proceedings brought by the Department of Child Safety (DCS). In regards to this ethics opinion my concern is about our representation of children. Obviously our representation of children often involves allegations of abuse. Some of these are known to DCS but some may not be. The Juvenile Court Rules since at least 2011 have required children's counsel to visit children before each hearing. This has added a significant time burden in terms of an attorney's duties, especially in rural counties. The children we represent are most often located out of county, hours away from our office. The Rule allows us to use appropriately trained support staff to accomplish the visitation requirement. (See Juvenile Court 40.1(G)). We have relied on social workers as appropriately trained staff to perform the required visitation with the children. Without the ability to use these social workers we would not be able to fulfill our duties.

When we are appointed for younger children or those who have disabilities that render them unable to comprehend the proceedings we act as guardian ad litem and the confidentiality is not an issue. However, for our older minor clients where we act as counsel, it is conceivable that they may disclose past abuse in a visitation with our social worker that may not previously have been disclosed. Normally this would not be something we disclose without permission from our client. However, this ethics opinion indicates that if the disclosure is made to the social worker acting as an employee of the attorney the confidentiality would be compromised. I understand that the proposed solution is to advise the client of the lack of confidentiality when dealing with a social worker, but that does not seem practical when dealing with minors as clients. If our social worker would be required to disclose past abuse it would jeopardize our ability to use them to fulfill our visitation duties. ER 5.3 indicates that our assistants must comply with our professional obligations. In this regard, I would argue that the confidentiality requirement extends from the lawyer to the social worker instead of the social worker's disclosure requirements being imposed on the lawyer/client relationship, at least in regards to representation of minors. To hold otherwise would negate the whole purpose of allowing attorneys to hire social workers to perform the significant additional burden imposed by the juvenile rules. I would also note that we are talking about clients that already have DCS involvement which means disclosing past neglect would serve no practical purpose because the minors have already been removed from the perpetrators.

I would ask that the Ethics Opinion limit its scope to lawyers working with crime victims as that was the original request.

Thank you for your consideration.

Erika A. Arlington  
Coconino County Legal Defender

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