



Maricopa County

Public Defense Services

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To: Attorney Ethics Advisory Committee

From: Chris Phillis - Director, Public Defense Services
Rosemary Pena-Lynch – Director, Legal Advocate
Sherri McGuire Lawson – Director, Legal Defender
Sabrina Ayers Fisher – Director, Public Advocate

Re: Proposed Ethics Opinion 19-0003

Date: 02/05/2020

The Attorney Ethics Advisory Committee's Ethics Opinion 19-0003 is overly broad, misstates the law and hinders an attorney's ability to competently and zealously represent a client. The AEAC's ethics opinion requires an attorney to advise a client that the social worker, mitigation specialist or other para-professionals assisting with the client's case may be a mandatory reporter and therefore the client should be wary of providing members of the defense team with any information that could be a reportable offense. This opinion places an attorney in an impossible position of gaining the client's trust while advising the client not to trust members of the attorney's team.

The AEAC inaccurately interprets A.R.S. §13-3620(A)(1) to require all individuals who are a physician, physician assistant, behavioral health professional, nurse, psychologist counselor or social worker to be mandatory reporters. However, the statute clearly states that the medical and behavioral professionals must learn of the possible abuse or mistreatment *while treating* the client. Medical and behavioral professionals who are members of a defense team are not retained to provide treatment. The professionals are utilized to gather mitigation, create a treatment plan and locate services to assist the client.

The AEAC's proposed opinion will negatively impact attorneys representing clients in juvenile court. Attorneys in juvenile court represent children charged with delinquent acts or parents involved in dependency, severance or guardianship cases. Attorneys representing youth often rely on mitigation specialists, many of whom have a degree in social work, to assist in finding programs that will promote the rehabilitation of the youth. The mitigation specialist and minor client must discuss the minor's behavior to locate appropriate services to rehabilitate the youth. Youth who are advised that the

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mitigation specialist may be required to report conduct considered abusive are not likely to speak with the mitigation specialist and therefore less likely to receive rehabilitative services.

Parent's attorneys employ social workers, many who have prior Department of Child Safety experience, to assist parents locate services in the community to address the issues that necessitated the removal of their children. A multi-year study conducted by Casey Programs found that parents who receive the assistance of an attorney, social worker and parent advocate were reunited with their children an average of four months sooner than those who only received the assistance of an attorney. Attorneys who are unable to employ social workers to assist parents locate vital services due to justifiable ethical concerns will hinder the reunification of the family. The separation of a child from his/her parents is a traumatic event. The longer the child remains out of the home, the longer the child must endure the trauma of separation.

AEAC's Ethics Opinion 19-0003 as written will negatively impact the children and families involved in delinquency and dependency cases. Minors and parents after hearing the chilling advisement of their attorney regarding social workers, will forego the possibly life altering assistance. Minors will not receive the services to facilitate their transformation from mischievous youth to responsible adults and children will remain adrift in the foster care system.