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REPORTING AND PROFESSIONAL RESPONSIBILITY:

A LAWYER'S OBLIGATION TO REPORT CHILD ABUSE IN THE WAKE OF **BLICKMAN**

Recently, in *Matter of Blickman*, 164 N.E.3d 708 (Ind. 2021), the Indiana Supreme Court partially addressed an attorney's ethical obligation when confronted with an extremely difficult situation: What should a lawyer do after learning about suspected child abuse or neglect while representing a client? In *Blickman*, the court provided some guidance but ultimately left the most contentious question—how a lawyer's statutory duty to report suspected child abuse should be reconciled with their duty of client confidentiality—unresolved.

Indiana law is clear that “an individual who has reason to believe that a child is a victim of child abuse or neglect” has a **duty** to “make a report.” Indiana Code

§ 31-33-5-1. This law applies to *anyone* who becomes aware of possible child abuse, and there is no statutory exception for attorneys. Individuals also have a duty to report suspected child abuse “immediately.” I.C. § 31-33-5-4. In *C.S. v. State*, 8 N.E.3d 668, 671–72, 692 (Ind. 2014), for example, the Indiana Supreme Court held a high school principal violated Indiana’s reporting statutes by waiting a mere four hours to report a student’s rape to the Department of Child Services (DCS). These mandatory reporting

or assisted a criminal act under Rule 1.2(d) by not immediately instructing his client to report the child abuse. *Id.* at 714–16. It then considered whether he had committed a criminal act reflecting adversely on his fitness as a lawyer under Rule 8.4(b) by failing to report the abuse directly to DCS. *Id.* at 716–17.

I. A LAWYER SHOULD PROMPTLY ADVISE A CLIENT TO IMMEDIATELY REPORT SUSPECTED CHILD ABUSE

"In *Blickman*, outside counsel for a private high school learned from a student’s father that the father believed a teacher had engaged in a series of inappropriate sexual electronic communications with his daughter. "

statutes as applied to an attorney, however, stand in tension with a lawyer’s obligation under Indiana Rule of Professional Conduct 1.6’s confidentiality provision, which generally requires a lawyer to “not reveal information relating to representation of a client.”

In *Blickman*, outside counsel for a private high school learned from a student’s father that the father believed a teacher had engaged in a series of inappropriate sexual electronic communications with his daughter. 164 N.E.3d at 710. The attorney told his client he needed time to research the issue and informed the school it was required to immediately make a report to the DCS the next morning. *Id.* The court first analyzed whether the lawyer acted incompetently under Rule 1.1

The Supreme Court in *Blickman* concluded the lawyer did not violate the Rules of Professional Conduct by waiting until the day after he discovered the suspected child abuse to advise the school to make a report. *Id.* at 715–16. In its decision, the court cited the reporting statutes’ complexity and counsel’s lack of knowledge of the statutes. *Id.* It also emphasized, while “it would have been better” for the attorney to have been more familiar with Indiana’s reporting requirements, Rule 1.1 requires less than perfection. *Id.* at 715. The court also found significant the fact the lawyer did not “remain willfully ignorant” of the statutory requirements but rather, promptly researched the issue before telling his client a report should be made “right away” early the next morning. *Id.* at 716.



Based on this discussion, it is not clear the court would have reached the same conclusion if the school's outside counsel had been more knowledgeable about the reporting statutes, or if he had waited to complete other tasks before researching the issue and reporting back to his client. Others should take note and not delay when advising a client of their legal obligation to immediately report suspected child abuse. Ignorance of the statutory requirements may be harder to demonstrate in the wake of this decision, and the court has made clear that willful ignorance is no defense. Additionally, a lawyer should make clear to their client that time is of the essence when reporting child abuse.

II. THE TENSION BETWEEN INDIANA'S STATUTORY REPORTING REQUIREMENTS AND RULE 1.6 REMAINS UNRESOLVED

Next, in addressing the lawyer's failure to directly report the abuse, the Indiana Supreme Court recognized the longstanding tension between the reporting statutes and Rule 1.6's confidentiality provision. *Id.* at 717. The court in *Blickman* cited various, differing viewpoints on the conflict, including a 2015 advisory opinion from the Indiana State Bar Association offering as a solution that a lawyer "must" report suspected child abuse if they believe that doing so is reasonably necessary "to prevent reasonably certain death or substantial bodily harm" *Id.* at 717. Rule 1.6(b)(1) allows a lawyer

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to reveal information relating to a representation to the extent the lawyer reasonably believes necessary “to prevent reasonably certain death or substantial bodily harm.” Read together with section 31-33-5-1, which provide “an individual who has reason to believe that a child is a victim of child abuse or neglect shall make a report,” Rule 1.6(b)(1)’s permissive “may” arguably becomes a “must” if the abuse or neglect rises to certain death or substantial bodily harm.

But the court ultimately declined to offer any definitive resolution, concluding even if counsel wrongly concluded he was not obligated to directly report the suspected child abuse, that decision did not “reflect adversely on [his] honesty, trustworthiness, or fitness as a lawyer.” *Blickman*, 164 N.E.3d at 718. Instead, the unsettled nature of this ethical dilemma may serve as a sort of “safe harbor” for counsel and anyone who might likewise “guess incorrectly” about the “unsettled legal matter.” *Id.* The court did clarify the fact that counsel learned of the possible abuse from the student’s father and not directly from his client was a “distinction

without a difference” for purposes of confidentiality under Rule 1.6, since the Rule’s confidentiality provision applies to all information pertaining to a representation, no matter its source. *Id.* at 717 n.4.

III. AN ATTORNEY CANNOT USE A CONFIDENTIALITY AGREEMENT TO PREVENT A VICTIM OF CHILD ABUSE FROM COOPERATING WITH DCS AND LAW ENFORCEMENT

with DCS and law enforcement. *Id.* at 711–12. The daughter’s father later canceled the interview. *Id.* at 712. The court, identifying “a clear causal connection” between counsel’s conduct and the interview’s cancellation, found the attorney’s actions amounted to incompetent representation under Rule 1.1 and conduct prejudicial to the administration of justice under Rule 8.4(d). *Id.* at 714.

"Giving clear guidance for practitioner's going forward, the court found confidentiality provisions that prevent a child abuse victim and their family from cooperating with law enforcement authorities violate public policy."

While the court in *Blickman* declined to definitively resolve the longstanding tension between Indiana’s child abuse reporting statutes and Rule 1.6, the court emphasized an attorney cannot try to silence a victim of child abuse or, in seeking to enforce a contractual confidentiality provision, prevent a victim and their family members from cooperating with DCS and law enforcement. *Id.* at 713–14.

After the school made the report, outside counsel set to work drafting a confidential settlement agreement for the school and the father and daughter to sign. *Id.* at 711. When he learned in the following weeks that DCS and law enforcement were scheduled to interview the daughter, counsel emailed the daughter’s attorney and informed him the not-yet-executed agreement would not allow for communications

Giving clear guidance for practitioner’s going forward, the court found confidentiality provisions that prevent a child abuse victim and their family from cooperating with law enforcement authorities violate public policy. *See id.* at 713. The court further found the attorney in *Blickman* who sought to enforce such an unenforceable provision did his client no favors, since doing so only increased his client’s reputational harm and criminal exposure. *Id.* at 713–14. The takeaway here is even when a victim and their family desire for the details of suspected child abuse to remain private, an attorney still cannot prevent the abuse from being reported.

The court rejected *Blickman*’s argument there was no violation the settlement agreement containing the confidentiality provision was

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never executed, or his client claimed to have already fully disclosed the suspected abuse to DCS. *Id.* at 713. The court further found he also could not cure his attempts to silence the student and her family by emailing their lawyer after the fact to clarify the proposed agreement would not actually prohibit communications with DCS and law enforcement. *Id.* at 714.

IV. MAJOR TAKEAWAYS FROM THE COURT'S OPINION

The Indiana Supreme Court declined to address whether an attorney is required to report suspected child abuse they discover during representation. But even if a lawyer, citing Rule 1.6's confidentiality provision, does not directly report suspected child abuse, they still must advise a client to make an immediate report and cannot stand in the way of a victim's family's attempts to cooperate with authorities investigating the abuse. Furthermore, any attempts to enforce a confidentiality clause in this context brings harm not just to the client, but to the attorney as well. Indiana lawyers are likely waiting for further guidance as this statute is interpreted in the coming years. But for now, the *Blickman* opinion does provide some inarguable "black and white" guidance in an area that is decidedly gray. (RC)

