

2001 Formal Ethics Opinion 5

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LAP Support Groups and the Duty to Report Misconduct

Opinion rules that disclosures made during a LAP support group meeting are confidential and not reportable to the State Bar under Rule 8.3.

Inquiry:

The Lawyer Assistance Program (LAP) of the North Carolina State Bar has the following three purposes: (1) to protect the public by assisting lawyers and judges who are professionally impaired by reason of substance abuse, addiction, or debilitating mental condition; (2) to assist impaired lawyers and judges in recovery; and (3) to educate lawyers and judges concerning the causes of and remedies for such impairment. 27 N.C.A.C. 1D, Rule .0601. To assist lawyers who are professionally impaired because of depression or another debilitating mental condition, LAP organizes support groups for impaired lawyers sometimes called "accountability groups." At a meeting of one of these groups, impaired lawyers share their experiences in an effort to support each other's recovery. A designated representative of LAP is present and facilitates each meeting of a group.

The therapeutic purpose of the group is to hold each member accountable and to encourage honesty and openness. However, Rule 8.3(a) of the Revised Rules of Professional Conduct provides "A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the North Carolina State Bar or the court having jurisdiction over the matter." If a participant in a support group is worried that he or she may be making a reportable disclosure, it will prevent the honesty and openness that is necessary to the therapeutic purpose of the group. It would be equally counter-productive for a lawyer who is listening to another participant's disclosures to be concerned that he or she may have to report the lawyer to the State Bar.

Does a lawyer who is participating in a LAP accountability group have to report the conduct of another lawyer in the group to the North Carolina State Bar if the other lawyer discloses conduct that is reportable under Rule 8.3(a)?

Opinion:

No. To promote the purposes of the LAP program, the exception to reporting found in Rule 8.3(c) is extended to communications during a meeting of an accountability group. Rule 8.3(c) states that the disclosure rule does not require disclosure of confidential information. Under Rule 1.6(b), confidential information includes "information received by a lawyer then acting as an agent of a lawyer's or judge's assistance program approved by the North Carolina State Bar or by the North Carolina Supreme Court

regarding another lawyer or judge seeking assistance or to whom assistance is being offered." Since a representative of LAP is present at each meeting of an accountability group, the duty of confidentiality extends to all communications to the representative during the meeting as well as to any communication among the members of the support group during the meeting.