

## **Ethics Decision 2017-1**

**January 27, 2017**

### ***Duties of Supervising Lawyer for Charlotte School of Law Clinic***

Opinion rules that the client-lawyer relationship is between the clients in a Charlotte School of Law clinic and the lawyer supervising the clinic and, upon termination of the supervising lawyer's employment by the law school, the supervising lawyer must take certain actions to protect the interests of the clients.

#### **Facts:**

Charlotte School of Law (the law school), located in Charlotte, North Carolina, is an independent, for-profit, law school owned by InfiLaw System.

The law school maintains various in-house legal clinics. Pursuant to N.C. Gen. Stat. § 84-7.1(1) and the State Bar's Rules Governing Practical Training of Law Students, 27 NCAC 01C .0200, law students participating in the clinics were certified as legal interns by the State Bar. Once certified, they were allowed by the law school to provide legal services and counsel to indigent clients under the supervision of a faculty member who is a licensed lawyer (the supervising lawyers).

On or around January 23, 2017, Charlotte School of Law abruptly terminated the employment of the supervising lawyers who were employees of the law school. The employment of the law school clinic director, who is not a North Carolina lawyer, was not terminated. The supervising lawyers were told that InfiLaw, the owner of the law school, would assume responsibility for the active clinic cases.

#### **Inquiry #1:**

What are the ethical duties of the supervising lawyers relative to clinic clients with active matters?

**Opinion #1:**

The client-lawyer relationship exists between the clients and the supervising lawyers—not between the clients and the law school or the corporate owner, neither of which holds a license to practice law. Pursuant to the Rules Governing the Practical Training of Law Students, a supervising attorney “shall assume personal professional responsibility for any work undertaken by a legal intern while under his or her supervision.” 27 NCAC 01C .0205(a)(3). Therefore, the supervising lawyers are professionally responsible for protecting the clinic clients’ interests, including preserving the confidentiality of the clients’ information, safekeeping the clients’ files, and ensuring that the clients’ representation continues until the supervising lawyers properly withdraw from the representation or transition cases to new legal counsel (including, where appropriate, Legal Aid). See Rules 1.6, 1.15, 1.16. If there is a matter in which a lawyer has made a court appearance, the lawyer is responsible for that matter until the court allows the lawyer to withdraw. Rule 1.16 (c).

In this scenario, the supervising lawyers must take possession of active client files, must advise the clients of the changed circumstances, and discuss with the clients the options for future representation. If a supervising lawyer is willing to continue a client’s representation, the lawyer may do so with the client’s informed consent.

**Inquiry #2:**

Following the lawyers’ termination, the lawyers were asked to provide the law school clinic director with information as to any open case files in the clinics. The supervising lawyers believe that the director is going to give the information to the administration of the law school or to InfiLaw.

In this situation, what information may the lawyers turn over to the law school clinic director?

**Opinion #2:**

Pursuant to Rule 1.6, the supervising lawyers owe the clinic clients a duty of confidentiality. The lawyers may not reveal information acquired during the professional relationship to the clinic director where there is legitimate concern that the information will be disclosed to unauthorized persons unless the client has given informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by Rule 1.6(b).