

Los Angeles County Bar Association Professional Responsibility and Ethics Committee

FORMAL ETHICS OPINION NO. 504
May 15, 2000

An Attorney's Duty To Follow A Client's Explicit Instruction Not To Disclose Confidential Information In The Context Of A Minor Client's Disclosure Of On-Going Sexual Abuse In Dependency Proceedings

An attorney is ethically obligated to follow the instructions of a minor client to maintain in confidence a communication between the attorney and the minor in which the minor discloses that the minor has been the victim of sexual abuse, provided the attorney properly discusses the matter with the minor and the attorney reasonably believes that the minor client is competent to make an informed decision on the matter. This is true even if the attorney believes the decision is not in the minor client's best interest. If the attorney so disagrees with the minor client's decision that the attorney-client relationship is materially impaired and the attorney cannot continue to represent the minor client competently, the attorney must seek to withdraw from the engagement.

If the attorney reasonably believes that the minor is not competent to make an informed decision on the matter, the attorney may not substitute the attorney's own decision for that of the minor client. The attorney is not ethically precluded from undertaking appropriate action to protect the minor client's interests. This may include seeking the appointment of a guardian ad litem. In seeking the appointment of a guardian ad litem, the attorney is ethically precluded from disclosing to the court the information obtained from the minor client in confidence, that the minor client instructed the attorney to maintain in confidence. If a guardian ad litem is appointed for the minor, the attorney may ethically disclose the minor's confidential information to the guardian ad litem and should follow the instructions of the guardian ad litem, even if those instructions conflict with those of the minor client.

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Statutes and Regulations:

Cal. Bus. & Prof. Code § 6068(e)

Cal. Code Civ. Proc. § 372(a)

Cal. Code Civ. Proc. § 437(b)(1)

Cal. Evid. Code § 956

Cal. Evid. Code § 956.5

Cal. Fam. Code § 6601

Cal. Fam. Code § 6922

Cal. Fam. Code § 6924

Cal. Fam. Code § 6926&

Cal. Pen. Code § 11164

Cal. Pen. Code § 11166

Cal. Welf. & Inst. Code § 317

Cal. Welf. & Inst. Code § 326

Cal. Welf. & Inst. Code § 356.5

N.C. Gen. Stat. § 7A-543

Utah Code Annotated § 62A-4a-403(1)

Other:

ABA Model Rules of Professional Conduct 1.2(a)

ABA Model Rules of Professional Conduct 1.4(b)

ABA Model Rules of Professional Conduct 1.14(a)

ABA Model Rules of Professional Conduct 1.14(b)

Cal. Rules of Professional Conduct 1-100(A)

Cal. Rules of Professional Conduct 3-110

Cal. Rules of Professional Conduct 3-700(C)(1)(a)

Cal. Rules of Professional Conduct 5-200(B)

Cal. Bar Ass'n Form. Op. 1977-45

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B. Fraser, Independent Representation For the Abused and Neglected Child: The Guardian Ad Litem , 13 Cal. Western L. R. 16 (1976)

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T. Grisso, Juvenile's Capacities To Waive Miranda Rights: An Empirical Analysis , 68 Cal. L. Rev. 1134 (1980)

FACTS AND ISSUES PRESENTED:

The court has appointed the inquiring attorney to represent a minor child in dependency court proceedings pursuant to California Welfare and Institutions Code section 317¹ . The minor's age is not disclosed in the inquiry. The minor does not have a guardian ad litem. During a confidential attorney-client communication, the minor client tells the attorney that the minor client is being sexually assaulted at the residence where the minor client is currently placed pursuant to court order. For reasons not disclosed in the inquiry, the minor client explicitly directs the attorney not to disclose this information to anyone. The attorney is concerned that non-disclosure is not in the best interests of the minor client. Also, the inquiring attorney is uncertain whether Section 317 of the Welfare and Institutions Code imposes a legal obligation to disclose confidential information that is inconsistent with an attorney's general ethical obligation to follow a client's explicit instruction to maintain such information in confidence.

In his inquiry, the court-appointed attorney requests comments from the Committee on the following issues:

1. How should the attorney handle the perceived conflicting legal and ethical responsibilities?
2. Are the express wishes of the minor client controlling?
3. Is the age of the minor client a factor to be considered?
4. Is there an implicit exception to the attorney-client privilege for court-appointed dependency counsel in this type of situation?
5. Is it appropriate for the minor client's attorney to disclose the information to the Court in confidence with the intention of protecting the minor client's best interests and providing the Court with the necessary evidentiary basis for an order that the minor client be placed in another home, that contact with the abuser be appropriately restricted, and that the minor client be provided counseling?

DISCUSSION:

This inquiry raises a series of questions, the fourth of which, as stated, is an issue relating to the law of evidence - namely, whether there is an implicit exception to the attorney-client privilege for court-appointed dependency counsel. In keeping with its long-standing policy, the Committee declines to respond to legal issues raised by an inquiry. See, e.g., L.A. County Bar Form. Op. 417 (1983); see also Cal. Form. Op. 1977-45. Instead, the Committee will devote the remainder of this opinion to discussing the ethical issues raised by the inquiry.

The inquiry presents an example of the tensions that arise if one seeks to define an attorney's role not merely as the client's legal adviser and advocate, but also as an advocate of the position the attorney believes is in the best interests of the client, regardless of the client's express wishes. See Martin Guggenheim, The Right To Be Represented But Not Heard: Reflections On Legal Representation For Children, 59 N.Y.U. Law Rev. 76 (1984); see also In re Rose Lee Ann L. (Ill. App. 1st Dist. 1999) 1999 WL 701336 (Illinois Court of Appeal declines to address attorney's request for explanation of role of court-appointed attorneys in juvenile proceedings). This tension becomes particularly pronounced when the client is a minor child who may or may not be capable of making an informed decision about the conduct of legal proceedings.

In the inquiry, the minor has informed the minor's court-appointed attorney during a confidential communication that the minor has been the victim of sexual abuse in the home in which the court has placed the minor. Because this information was disclosed by the client to the attorney in confidence, California Business and Professions Code Section 6068(e) prohibits the attorney from disclosing it without client consent. See, e.g., L.A. County Bar Ass'n Form. Op. 436 (1985); Cal. Bar Ass'n Form. Op. 1989-112; Cal. Bar Ass'n Form. Op. 1988-96; Cal. Bar Ass'n Form. Op. 1987-93.

Section 6068(e) provides that every attorney has an ethical obligation to "maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets of his or her client." Cal. Bus. & Prof. Code § 6068(e)². The duty to maintain a client's confidence and secrets is paramount. See People v. Singh (1932) Cal.App. 365, 369-370; see also L.A. Bar Ass'n Form. Op. 436 (1985) (attorney may not ethically disclose fact that client engaged in unauthorized practice of law); L.A. County Bar Ass'n Form. Op. 422 (1983) (based on client's express instructions, attorney was ethically obligated to maintain in confidence fact that client's former attorney filed bankruptcy petition for client and forged client's name on petition). The reasons for this have often been discussed by the courts. See, e.g., Swidler & Berlin v. United States (1998) 524 U.S. 399 (The attorney-client privilege promotes trust in the representational relationship, thereby facilitating the provision of legal services and ultimately the administration of justice.); United States v. Zolin (1989) 491 U.S. 554, 562 (Attorney-client confidentiality facilitates the fact-finding process that is critical to representation and the proper functioning of our adversary system of justice.); Upjohn v. United States (1981) 449 U.S. 383, 389 (The rules protecting the confidentiality of attorney-client communications encourage the client to communicate frankly and fully with the lawyer, even as to embarrassing or legally damaging matter.). Therefore, without his client's informed consent, the inquiring attorney must maintain in confidence information about the minor client's sexual abuse because that information constitutes a client secret.

But, the inquiring attorney's ethical obligations are not limited to maintaining the client's confidential information. The attorney also has an ethical duty to represent the client competently. See Cal. Rules of Prof. Conduct 3-110. Rendering "competent" legal service requires, among other things, proper communication between the client and the attorney. Cal. Bar Assn. Form. Op. 1984-77 (analyzing ethical obligation of proper communication in context of non-English speaking clients); see also ABA Model Rules of Professional Conduct 1.4(b).

On any matter which requires client understanding, the attorney must take all reasonable steps to insure that the client comprehends the legal concepts involved and the advice given, so that the client is in a position to make an informed decision. See Cal. Bar Assn. Form. Op. 1984-77; see also Considine Co., Inc. v. Shadle, Hunt & Hager (1986) 187 Cal.App.3d 760 (noting attorney's duty to "fully inform the client about his or her rights and the alternatives available under the circumstances."). The client's age and maturity are significant factors controlling how an attorney must discharge the ethical obligation of communicating with the client. See ABA Model Rules of Prof. Conduct 1.14(a)³.

Attorneys representing juveniles must remember that communication with children is different from communication with adults. The attorney should first assess the minor client's ability to understand the terminology being used, the minor client's knowledge of judicial proceedings, and the impact the minor

client's maturity level (or lack thereof) will have on the minor client's ability to evaluate the position the minor client is in. The attorney may have to explain some things differently or use different terminology when speaking with the minor client. See E. Marrus, Please Keep My Secret: Child Abuse Reporting Statutes, Confidentiality, and Juvenile Delinquency, Geo. J. of Leg. Ethics, Vol. XI, No. 3, 509, 535 (Spring 1998).

The inquiry reflects that the attorney and minor client have had some discussion about the matter (in that the minor client has stated some reasons for instructing the attorney not to disclose the confidential information). There is inadequate information for the Committee to determine whether as an ethical matter the attorney has satisfied his ethical obligation to communicate properly with the minor client.

The attorney must next make an assessment as to whether the minor client's wishes are controlling, which depends on the minor client's capacity to make an informed decision. In general, the authority to make material decisions affecting the direction of legal proceedings is exclusively that of the client, and, if made within the framework of the law, such decisions are binding on the attorney. See, e.g., ABA Model Rules of Prof. Conduct 1.2(a) ("A lawyer shall abide by a client's decisions concerning the objectives of representation [subject to certain exceptions] and shall consult with the client as to the means by which they are to be pursued."); see also Martin Guggenheim, The Right To Be Represented But Not Heard: Reflections On Legal Representation For Children, 59 N.Y.U. Law Rev. 76, 80 (1984). Allowing the client to control the litigation is consonant with our belief that individuals should be allowed to make the important decisions about their lives for themselves, even though the decisions they make may be unreasonable or shortsighted. Guggenheim, supra, 59 N.Y.U. Law Rev. at 82.

A client, because of his or her minority, may be unable to make decisions regarding the representation. See ABA Model Rules of Professional Conduct 1.14(a). The Committee notes that there is a wide divergence of views as to the age at which a minor is considered responsible for his or her actions or capable of making important decisions. See, e.g., Cal. Welf. & Inst. Code § 317 (requiring court-appointed counsel in dependency proceedings to report to court wishes of minor 4 years of age or older); In re Gault (1967) 387 U.S. 1 (noting that at age of 7 minor can be held responsible for criminal activity); Note, Appointing Counsel For the Child In Actions To Terminate Parental Rights, 70 Calif. L. Rev. 481, 510 n. 195 (1982) (suggesting that child's instructions should prevail in non-delinquency proceedings beginning at age of 10); Cal. Code of Civ. Proc. § 437(b)(1) (providing that minor 12 years of age or older may appear in court without an attorney, guardian or guardian ad litem for purpose of requesting an injunction or temporary restraining order to prohibit harassment); Cal. Family Code §§ 6924, 6926 (minor may consent to mental health treatment or counseling, to residential shelter services, and to medical care in connection with certain infectious diseases if, among other requirements, minor is 12 years of age or older); Mass. Bar Ass'n Op. 96-6 (1993) (attorney representing 13-year-old client must advocate client's position even though attorney believes it is not in client's best interests, as long as attorney believes client is competent to make decision); Thomas Grisso, Juvenile's Capacities To Waive Miranda Rights: An Empirical Analysis, 68 Cal. L. Rev. 1134, 1134 n. 3 & 1160 (1980) (noting that only 10 percent of juveniles, and less than 5 percent of juveniles age 14 and under, choose not to waive their Miranda rights and concluding that juveniles younger than 15 years fail to comprehend the Miranda warnings); Cal. Family Code § 6922 (minor may consent to his or her medical care or dental care, without consent of parent or guardian, if, among other requirements, minor is 15 years of age or older); J. Goldstein, A. Freund & A. Solnit, Before the Best Interests of the Child (1979) (suggesting that children should not have right to make their own decisions until they reach legal adulthood at age 18). The Committee believes that for purposes of defining an attorney's ethical obligations, it is not appropriate to fix a particular age at which a minor becomes presumptively capable or incapable of making an informed decision regarding the disclosure of confidential information. Rather, an attorney must make this determination based on all relevant factors and circumstances, including the minor's age, language skills, and maturity.

For the reasons stated above, if the attorney reasonably believes that the minor client has made an informed decision not to disclose the client's confidential information, even though the information is that the minor is being sexually assaulted and even though the attorney believes that the decision is not in the

best interests of the minor, the attorney is not ethically permitted to disclose the information. The fact that Welfare and Institutions Code section 317(e) provides that "[c]ounsel for the minor shall not advocate for the return of the minor if, to the best of his or her knowledge, that return conflicts with the protection and safety of the minor" does not change the attorney's ethical obligation to maintain inviolate the minor's confidential information. The attorney must honor an explicit instruction from a competent client to maintain the client's confidential information in confidence. If the disagreement between the attorney and client materially impairs the attorney-client relationship such that the attorney cannot competently perform his or her duties, the attorney must seek to withdraw from the matter. See Cal. Rules of Professional Conduct 3-700(C)(1)(a); see also In re Rose Lee Ann L. (Ill. App. 1st Dist. 1999) 1999 WL 701336 at * 5 ("Having recognized his own ethical dilemma [of having to advocate a position by his clients that he opposed], [the attorney] took the correct course of conduct in seeking to withdraw."). In withdrawing, the attorney should honor the client's instruction not to disclose the fact that the minor is being sexually assaulted ⁴.

If the attorney believes that the minor client is not capable of making an informed decision on the disclosure and use of the minor's confidential information, the attorney may not disregard the client's wishes and substitute his or her own judgment for that of the client. See L.A. Co. Bar Ass'n Form. Op. 450 (1988). Nevertheless, if the attorney believes that the minor client is not capable of making an informed decision - especially on a matter potentially impacting the minor client's physical and emotional health - the attorney is not ethically precluded from undertaking appropriate action to protect the client's interests, provided that in doing so the attorney also maintains in confidence the client's confidential information. In determining what action, if any, is appropriate, the minor's attorney must consider the mandate of Welfare and Institutions Code Section 300.2, which states in relevant part:

Notwithstanding any other provision of law, the purpose of the provisions of this chapter relating to dependent children is to provide the maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection and physical and emotional well-being of children who are at risk of that harm. . . . In addition, the provisions of this chapter ensuring the confidentiality of proceedings and records are intended to protect the privacy rights of the child.

The attorney is then faced with the question of whether Section 300.2 overrides the obligations imposed on the attorney by Business and Professions Code Section 6068(e). The Committee believes that the attorney can avoid the prospect of having to disclose the client's confidential information, which could have a devastating impact on the attorney-client relationship, especially in juvenile proceedings, by seeking the appointment of a guardian ad litem. In other contexts, there appear to be differences of views as to whether an attorney can ethically seek or facilitate the appointment of a conservator or guardian ad litem for his or her client over the client's objection. See S.F. Bar Ass'n Form. Op. 1999-2 (attorney may, but is not required to, take protective action, such as seeking appointment of trustee, conservator or guardian ad litem for client unable to manage his or her affairs); S.D. Bar Ass'n Form. Op. 1978-1 (attorney may not ethically seek appointment of conservatorship for own client); L.A. Bar Ass'n Form. Op. 450 (1988) (same); Cal. Bar Ass'n Form. Op. 1989-112 (same); O.C. Bar Ass'n Form. Op. 95-002 (attorney may not ethically disclose facts adverse to client suffering from dementia in client's conservatorship proceedings because of client's earlier opposition to the proceeding). In the Committee's view, because of the overriding concern for the protection of the minor, as reflected in Welfare and Institutions Code Section 300.2, seeking the appointment of a guardian ad litem in the context of juvenile proceedings is sui generis. Under the circumstances, the attorney is not ethically precluded for seeking the appointment of a guardian ad litem for the minor, provided the attorney takes this action without disclosing the client's confidential information and with as little intrusion as possible upon his or her general ethical obligations. See Brian G. Fraser, Independent Representation For The Abused And Neglected Child: The Guardian Ad Litem, 13 Cal. Western L. R. 16 (1976) (concluding that guardian ad litem is most effective form of independent representation); Mass. Bar Ass'n Ethics Comm. Op. 96-6 (1993) (attorney believing 13-year-old client's decision is not in her best interests may seek appointment of guardian ad litem); Cal. Code Civ. Proc. § 372(a) (A guardian ad litem may be appointed in any case when it is deemed by the court in which the proceeding is pending, or

by a judge thereof, expedient to appoint a guardian ad litem to represent the minor.); Cal. Welf. & Inst. Code §§ 326 & 356.5.

If a guardian ad litem is appointed for the minor client, the next issue is whether the attorney is ethically permitted to discuss with the guardian ad litem the minor client's confidential information, including the incidents of sexual abuse. For purposes of this opinion, the Committee assumes that a guardian ad litem has the power to control and direct the minor ward's litigation⁵ and controls the minor ward's attorney-client privilege⁶. Therefore, if a guardian ad litem is appointed, the attorney may ethically discuss with the guardian ad litem the fact and circumstances that the minor client has been sexually abused and look to the guardian ad litem for instruction.

If the guardian ad litem makes an informed decision and instructs the attorney not to disclose the fact that the minor is being sexually assaulted, the attorney is ethically obligated to follow the instruction. If the guardian ad litem makes an informed decision that the attorney should disclose the fact that the minor is being sexually assaulted, the attorney may ethically disclose such information even though such disclosure may be contrary to the minor's wishes. See De Los Santos v. Superior Court, supra, 27 Cal. 3d at 682.

SUMMARY

The fact that the attorney has been appointed by the Court to represent a minor in dependency proceedings does not change the attorney's fundamental ethical obligation to maintain inviolate a client's confidence and secrets. The appointment does not mean that the attorney has become, in effect, the client's guardian ad litem.

The minor client's decision whether or not to disclose confidential information, including information that the minor client has been sexually assaulted, is controlling on the attorney, provided the attorney reasonably believes the minor client is capable of making an informed decision. In order to satisfy the ethical obligation to provide competent legal services, the attorney should discuss the matter thoroughly with the minor client through words consistent with the minor's age, language skills, intelligence, experience, maturity and mental condition. If the attorney reasonably believes the minor client is capable of making an informed decision, the decision is controlling. If a disagreement between the client and the attorney materially impairs the attorney-client relationship and precludes the attorney from providing competent legal services, the attorney must seek to withdraw.

If the attorney believes that the minor client is not capable of making an informed decision, the attorney should take appropriate action to protect the client's interests, which may include seeking appointment of a guardian ad litem. But in taking such action, the attorney is ethically precluded from disclosing the minor client's confidential information contrary to the minor's explicit instructions. If a guardian ad litem is appointed for the minor, the attorney may ethically disclose the minor's confidential information to the guardian ad litem and should follow the instructions of the guardian ad litem, even if those instructions conflict with those of the minor client.

This opinion is advisory only. The Committee acts on specific questions submitted ex parte and its opinion is based on such facts as are set forth in the inquiry submitted.

¹ Section 317 provides, in pertinent part, as follows:

a. When it appears to the court that a parent or guardian of the minor desires counsel but is presently financially unable to afford and cannot for that reason employ counsel, the court may appoint counsel as provided in this section.

b. When it appears to the court that a parent or guardian of the minor is presently financially unable to afford and cannot for that reason employ counsel, and the minor has been placed in out-of-home care, or the petitioning agency is recommending that the minor be placed in out-of-home care, the court shall appoint counsel ...

c. In any case in which it appears to the court that the minor would benefit from the appointment of counsel the court shall appoint counsel for the minor as provided in this section. A primary responsibility of any counsel appointed to represent a minor pursuant to this section shall be to advocate for the protection, safety, and physical and emotional well-being of the minor. . . .

d. The counsel for the minor shall be charged in general with the representation of the minor's interests. To that end, the counsel shall make or cause to have made any further investigations that he or she deems in good faith to be reasonably necessary to ascertain the facts . . . He or she shall also introduce and examine his or her own witnesses, make recommendations to the court concerning the minor's welfare, and participate further in the proceedings to the degree necessary to adequately represent the minor. In any case in which the minor is four years of age or older, counsel shall interview the minor to determine the minor's wishes and to assess the minor's well-being, and shall advise the court of the minor's wishes. Counsel for the minor shall not advocate for the return of the minor if, to the best of his or her knowledge, that return conflicts with the protection and safety of the minor. . . . The attorney representing a child in a dependency proceeding is not required to assume the responsibility of a social worker and is not expected to provide nonlegal services to the child. The court shall take whatever appropriate action is necessary to fully protect the interests of the minor.

² Although the Evidence Code sets forth exceptions to the attorney-client privilege (see, e.g., Cal. Evid. Code §§ 956 & 956.5), on three occasions during the last decade, the California Supreme Court has declined to adopt rules creating corresponding exceptions to the ethical obligation imposed by Business and Professions Code Section 6068(e) to maintain inviolate a client's confidence and secrets. Thus, for example, if an attorney learns that a client intends to commit a crime that is likely to result in imminent death or serious bodily injury, a court may well conclude that the attorney-client privilege does not apply. See Evid. Code § 956.5. But the attorney may still have an ethical obligation to maintain this information in confidence pursuant to Business and Professions Code Section 6068(e). See Cal. Bus. & Prof. Code § 6068(e); see also L.A. Bar Ass'n Form. Op. 436 (1985) (unauthorized practice of law not sufficiently serious crime to warrant disclosure); Tarasoff v. Regents of Univ. of Calif. (1976) 17 Cal. 3d 425. Thus, if the attorney in the inquiry represented the child abuser, rather than the victim, and believed that his or her client intended to commit child abuse likely to result in imminent death or serious bodily injury to the child, one could argue that the attorney has a legal duty to disclose the client's intention, although it is still uncertain - and not within the scope of this opinion to determine - whether the attorney's disclosure is consistent with the ethical obligations imposed by Business and Professions Code Section 6068(e). L.A. County Op. No. 264; L.A. County Op. No. 353; see also Utah Eth. Op. 97-12 (Jan. 23, 1998) (suggesting that the answer is ultimately a legal issue, although opining it would not be an ethical violation not to disclose the fact that a client has sexually abused a minor); N.C. Eth. Op. RPC 120 (July 17, 1992) (it would not be an ethical violation not to disclose the fact that the client has sexually abused a minor, although the attorney could be criminally prosecuted under the state's mandatory reporting statute). In this inquiry, however, because the client is not the perpetrator of the crime, but the victim, the Committee need not, and does not, address this issue. Likewise, the Committee notes that California has a statute making it a crime not to report child abuse or neglect. Cal. Penal Code § 11164 et seq. (West 1998). Unlike statutes in other states, however, California Penal Code does not impose the reporting requirement on attorneys. Compare Cal. Penal Code § 11166 with N.C. Gen. Stat. § 7A-543 (1995) and Utah Code Ann. § 62A-4a-403(1) (1997).

³ Although the American Bar Association ("ABA") Model Rules of Professional Conduct do not establish ethical standards in California, they may be considered for guidance on proper professional conduct, particularly where there is no direct authority in California and there is no conflict with the public policy of California. See State Comp. Ins. Fund v. WPS, Inc. (1999) 70 Cal.App.4th 644, 655-56; see also Cal. Rules of Prof. Conduct 1-100(A).

⁴ The fact that the attorney disagrees with the minor client's competent and informed decision does not change the attorney's duty of candor to the Court. Cal. Rules of Professional Conduct 5-200(B); Di Sanatino v. State Bar (1980) 27 Cal.3d 159 (ethical rule prohibits material omissions as well as affirmative misrepresentations). Thus, for example, if the Court were to ask the attorney whether the minor client should continue to reside in the residence in which the Court has placed the minor, the attorney cannot ethically respond "No" because of the ethical duty to maintain client confidence and secrets inviolate. And the attorney cannot ethically respond, "Yes." See Cal. Rules of Professional Conduct 5-200(B); Cal. Welf. & Inst. Code § 317(e). Rather, the attorney should advise the Court that the attorney cannot respond to the Court's inquiry.

⁵ See Noe v. True (6th Cir. 1974) 507 F.2d 9, 12 (concurring opinion) (district court erred in failing to consider application for appointment of guardian ad litem for 14-year-old seeking injunction directing defendant (her legal guardian) to arrange for the furnishing of medical abortion).

⁶ See De Los Santos v. Superior Court (1980) 27 Cal. 3d 677, 682; see also Cal. Family Code § 6601 ("A minor may enforce the minor's rights by civil action or other legal proceedings in the same manner as an adult, except that a guardian must conduct the action or proceedings."); see also Martin Guggenheim, The Right To Be Represented But Not Heard: Reflections On Legal Representation For Children, 59 N.Y.U. Law Rev. 76, 94 (1984) ("A guardian ad litem, acting as a fiduciary, is empowered to decide what is in the best interests of his ward and to determine what position should be taken in the litigation; in carrying out his duties, the guardian may ignore even the express wishes of his ward. If necessary, the guardian has the authority to retain counsel for his ward, and in such cases, the attorney will take his instructions only from the guardian."); Moeller v. Superior Court (1997) 16 Cal. 4th 1124 (successor trustee becomes holder of attorney-client privilege regarding predecessor trustee's communications with counsel on matters of trust administration).