

to speak out and divulge such information, the lawyer similarly should not withhold such information from those who may be more competent than he to prevent the threatened act.^{1/}

Where disclosure of the client's intention to commit suicide occurs in the course of the lawyer's representation, however, the provisions of Canon 4 clearly apply. The information is confidential or at least "secret" within the meaning of DR 4-101(A) and, accordingly, may not be disclosed unless such disclosure can be justified as an exception to the general rule against revealing the confidences and secrets of a client.

In this latter connection, we note that EC 4-2 and DR 4-101(C)(3) recognize certain exceptions to the general rule thus permitting a lawyer to divulge "[t]he intention of [a] client to commit a crime and the information necessary to prevent the crime". This exception has its origin in a judicially created and universally accepted limitation on the attorney-client privilege. See, 8 Wigmore, Evidence, §§ 2298-2299 (McNaughton Rev. 1961). The exception would, of course, be applicable in all states which still

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It is widely recognized that suicidal intent is usually the product of a temporary mental condition. A disclosure of such intent, either by words or action, is often a cry for attention or help from a person in emotional extremis. Frequently, such disclosures are made to trusted individuals - a priest, a physician, a lawyer - in the hope, perhaps an unconscious one, that the individual approached cares enough to listen to the distressed person's problems and provide understanding assurance that the problems are not of such magnitude as to justify suicide. Sometimes such disclosures are made even to total strangers for the same purpose.

Under such circumstances, a lawyer's obligation should be the same as that of any sensitive and understanding individual. The lawyer should show appropriate concern, encourage the client to seek help, and if necessary disclose the situation to responsible family members, a physician or some other appropriate individual or agency. This obligation is especially strong where it appears that the client may not be mentally capable of making rational decisions. See, EC 7-11 and 7-12 (which recognize that a lawyer may well have an obligation to protect a client, even from his own irrational decisions); Suicide can often be averted by sensitive counseling, just as it may be precipitated by callous counseling or by a refusal by those to whom the disclosure is made to become involved in the distressed person's problems.

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treat attempted suicide as criminal. And, if attempted suicide were still a crime under the laws of this State, we should have no difficulty in finding that the Code permits a lawyer to divulge his client's expressed intention to take his own life without the need for further exposition or comment on our part. See, N.Y. State 405 (1975). The laws of this State will not, however, permit so facile a solution for attempted suicide is no longer a crime in New York.

Nevertheless, there are certain principles of conduct which a lawyer is obligated to uphold by the very nature of his office and its relationship to society. Cf., N.Y. State 479 (1978) with N.Y. State 466 (1977). These principles of conduct are the threads of our social fabric. None is more basic than society's concern for the preservation of human life. A lawyer cannot be unmindful of that concern.

The decriminalization of attempted suicide in this State was not intended to effect any basic change in the underlying common law and statutory policies of deep concern for the preservation of human life and the prevention of suicide.^{2/} Rather, attempted suicide was decriminalized in this State, as elsewhere, in order to promote the very same ends which the penal law had theretofore sought to accomplish. See, Schulman, "Suicide and Suicide Prevention: A Legal Analysis", 54 A.B.A.J. 855 at 856-860 (1968). We find this fact to be determinative; and, it

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At early common law, suicide and attempted suicide were crimes. Some states enacted statutes attaching penal sanctions to attempted suicide. Others have decriminalized suicide and attempted suicide, but make it a crime to aid another to attempt suicide. See, Clark & Marshall, Crimes (7th ed. 1967), § 10.03. As expressed by Woodside, J., in Commonwealth v. Root, 191 Pa. Super. 238, 244, 156 A. 2d 895, 900 (1959): "The policy of the law is to protect human life, even the life of a person who wishes to destroy his own."

Among offenses made criminal by the New York Penal Code of 1881 were attempted suicide (§§ 174, 178) and aiding, advising, encouraging or assisting another to commit or attempt a suicide (§§ 175, 176). Each of these offenses was classified as a felony. Section 173 of the 1881 Code also contained a specific statutory policy declaration that "suicide is deemed a grave public wrong." These five sections were carried forward without change as §§ 2301-2305 of the Penal Law of 1909. The sections making

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compels us to treat an announced intention to commit suicide in a manner similar to that which would obtain in the case of proposed criminal conduct under DR 4-101(C)(3).

Having noted society's general abhorrence of suicide, it may yet be observed that such feelings will on occasion admit to certain limited exceptions. Thus, consistent with the permissive character of the exception created by DR 4-101(C)(3), we also note that there may be circumstances when a lawyer can properly elect to remain silent. For example, a very much different situation may be presented by a client of apparently sound mind who discloses that he is contemplating suicide to avoid a lengthy, painful and expensive terminal illness. In such circumstances, the issues are not unlike those involved where a person of sound mind elects to refuse lifesaving medical treatment. While it would be illegal to aid a client or any other person to attempt suicide (Revised Penal Law § 120.30), the circumstances might well be such that a lawyer could properly decide that no unauthorized disclosure would be appropriate.

In sum, the lawyer's action, when a client has disclosed an intent to commit suicide, must depend upon the particular circumstances present, taking into account policies respecting the protection of human life and the prevention of suicide. Where the lawyer has reason to believe that the client's disclosure may be a cry for attention or help, the lawyer should make a special

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attempted suicide a crime were repealed by N.Y. Laws, Ch. 414 (1919). The policy statement and the aiding and abetting provisions remained unchanged until the present Revised Penal Law was enacted in 1965. Section 120.30 of the 1965 Law classified as a class E felony "intentionally caus[ing] or aid[ing] another person to attempt suicide." Section 120.35 specifies aggravated circumstances under which this offense may also constitute an attempt to commit murder. The earlier declaratory provision (§ 173, 1881 Penal Code; § 2301, 1909 Penal Law) was eliminated and in effect replaced by § 35.10(4), which provides:

"A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical injury upon himself may use physical force upon such person to the extent that he reasonably believes it necessary to thwart such result."

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effort to give the client sympathetic counseling. Where possible, the lawyer should encourage and assist the client to seek needed help. The lawyer may thus, and generally should, take appropriate action to keep the client from committing suicide and, for this purpose, may reveal the client's suicidal intent to others. Disclosure of client confidences respecting contemplated suicide obtained in the course of the lawyer's representation should not be made, however, unless the lawyer reasonably believes that such disclosure is necessary to prevent the client from taking his life.

For the reasons stated, and subject to the qualifications hereinabove set forth, the question posed is answered in the affirmative.
