

## *A Matter of* LIFE AND DEATH

**MARIA IS A FAMILY LAW ATTORNEY** whose practice consists mostly of divorce cases. She's developed a reputation for handling particularly contentious and difficult matters. She often gets referrals from other attorneys who find their clients too difficult to represent.

One of these cases involves Brian, whose wife is divorcing him. Brian is distraught about the divorce, and it has him alternating between belligerence and self-pity. Maria is used to representing this type of client, and she has developed techniques to set boundaries and communicate effectively regarding the purpose of the representation.

One evening, she gets a call from Brian, and he is clearly despondent about the reality that his marriage is about to end. After talking to him for a while, Maria ends the conversation by saying she will talk to him tomorrow. Brian responds by saying "If I'm even here tomorrow. I don't think I can go on without her."

Knowing Brian's fragile emotional state, Maria is very concerned that Brian is on the verge of suicide. She wants to contact someone who can help him, but she is mindful of her confidentiality obligations to Brian and unsure whether taking action would violate those obligations.

Which of the following is the most accurate under the ethics rules?

- A. Maria cannot reveal any information regarding her conversation with Brian.
- B. Maria *may* reveal the conversation only if Brian makes a "clear and explicit" threat to take his own life.
- C. Maria *must* reveal the conversation if Brian makes a "clear and explicit" threat to take his own life.
- D. Maria *may* reveal the conversation only if she has a "reason to believe" that it is necessary to prevent Brian from dying by suicide.
- E. Maria *must* reveal the conversation if she has a "reason to believe" that it is necessary to prevent Brian from dying by suicide.



### ABOUT THE CENTER

The Texas Center for Legal Ethics was created by three former chief justices of the Supreme Court of Texas to educate lawyers about ethics and professionalism. Lawyers can access the Texas Disciplinary Rules of Professional Conduct, the Texas Lawyer's Creed, and a variety of other online ethics resources by computer or smart device at [legaethicstexas.com](http://legaethicstexas.com).

### DISCLAIMER

The information contained in Ethics Question of the Month is intended to illustrate an ethics issue of general interest in the Texas legal community; it is not intended to provide ethics advice that applies regardless of particular facts. For specific legal ethics advice, readers are urged to consult the Texas Disciplinary Rules of Professional Conduct (including the official comments) and other authorities and/or a qualified legal ethics adviser.

**ANSWER:** Life-and-death questions like this one present some of the most difficult decisions lawyers can face. Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct specifies a lawyer's obligations regarding confidentiality, making clear that confidential information includes both attorney-client privileged information and "unprivileged client information." Unprivileged client information is defined as "all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client."

So does this mean that even a client's suggestion that he may take his own life cannot be revealed?

Fortunately, the Texas Disciplinary Rules of Professional Conduct were recently amended to address this specific situation. New Rule 1.05(b)(10) states that a lawyer "may reveal confidential information . . . [w]hen the lawyer has reason to believe it is necessary to do so in order to prevent the client from dying by suicide." Note that the rule uses the term "may" instead of "must," meaning the rule is permissive and not mandatory. The best response is D. For more analysis, go to [legaethicstexas.com/ethics-question-of-the-month](http://legaethicstexas.com/ethics-question-of-the-month).