An attorney may reveal a confidence or secret of his client indicating child abuse if a) the client has consented after full disclosure, b) the attorney reasonably believes that he is required to do so by law, or c) the attorney reasonably believes that his client will be endangering a child contrary to law and that the disclosure of the secret will prevent the crime.

STATEMENT OF FACTS
Attorney meets with and accepts client seeking a divorce from her husband. Client has recently separated from husband and has taken their son with her. At subsequent meetings, client shows attorney photographic and physiological evidence of present and continuing physical abuse inflicted by her husband on herself and on her son. Client is deeply fearful of husband. She will not and does not wish the attorney to report the abuse to the Department of Human Services for fear of retaliation by her husband. Client later informs attorney that she no longer wishes a divorce and is returning to husband’s abode with her son. Attorney believes she is returning out of fear. Client gave no indication to attorney that the abuse will cease. Attorney reasonably believes abuse will continue.

QUESTION PRESENTED
Is an attorney either required or permitted to divulge facts indicating child abuse when he gained such information in his professional relationship with his client?

DISCUSSION
I.
During conversations related to her proposed action for divorce, the client revealed to her attorney incidents of physical abuse allegedly inflicted on her and her son by her husband. That information constitutes a confidence or secret within the definition of DR 4-101(A):

“Confidence” refers to information protected by the attorney-client privilege under applicable law, and “secret” refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

DR 4-101(B) and (C) prohibit a lawyer from knowingly revealing a confidence or secret unless the client has consented after full disclosure, DR 4-101(C)(1), or if the lawyer is “required by law or court order” to reveal the confidence or secret. DR 4-101(C) (2).
Alternatively, the lawyer may, but is not required to, reveal information necessary to prevent a crime that his client intends to commit. DR 4-101(C)(3).

II.

The client has not consented to the lawyer’s revealing the abuse to the appropriate state agencies. From apparent fear, she has, in fact, specifically directed the lawyer not to tell anyone about the abuse.

III.

There is no doubt but that the Code of Professional Responsibility requires the divulging of those confidences or secrets that are required by law. Any attorney who reasonably believes that a law requires the disclosure of a confidence or secret is relieved of any ethical impediment from doing so. DR 4-101(C)(2). The exemption applies to any legal obligation. The state of Ohio has dealt with the issue of reporting child abuse in Ohio Revised Code 2151.421. O.R.C. 2151.421(A)(1) requires that

No attorney…who is acting in his official or professional capacity and knows or suspects that a child under eighteen years of age. . .has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicated abuse or neglect of the child, shall fail to immediately report. . .that knowledge or suspicion to [the appropriate state or county agency or municipal or county peace officer].

It is not within the mandate of the Professional Ethics Committee to make a determination of the meaning of a particular statute. Rather, as with any citizen, it is the attorney’s responsibility to ascertain his obligations under the laws of Ohio. We note only that the text of the statute makes the following exception for attorneys in 2151.421(A)(2):

An attorney is not required to make a report. . .concerning any communication made to him by one of his clients in the attorney-client relationship [unless] all the following apply:

(a) The client, at the time of the con is either a child under eighteen years of age or a physically or mentally handicapped person under twenty-one years of age;

(b) The attorney knows or suspects, as a result of the communication or any observations made during that communication, that the client has suffered or faces a threat of suffering any physical or mental wound, injury, disability or condition of a nature that reasonably indicates abuse or neglect of the client;

(c) The attorney-client relationship does not arise out of the client’s attempt to have an abortion without the notification of her parents. . .

We also note that, in the facts presented to us, the client is the mother, presumably over eighteen years of age, and not the child.
IV.

Presuming that neither O.R.C. 2151.421 nor any other law requires the attorney to reveal information indicating spousal or child abuse, the only remaining question is whether the attorney may reveal that confidence or secret because it constitutes “information necessary to prevent [a] crime” that his client intends to commit. DR 4-101(C)(3).

It is the attorney’s responsibility to determine whether his client’s proposed course of action constitutes a crime under the law and whether the attorney possesses information sufficient to prevent the crime. If so, the attorney is permitted under the Code of Professional Responsibility to reveal his client’s confidences or secrets, but he is not required to do so. DR 4-101(C).

Does the fact that the lawyer’s client, the mother, is returning to the home of her husband where spousal and child abuse has occurred and may continue to occur indicate any “intention of his client to commit a crime”? DR 4-101(C)(3). O.R.C. 2919.22, entitled, Endangering Children, provides:

(A) No person who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age. . . shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, of support.

In State v. Wardlow, 20 App.3d 1, 20 OBR 1, 484 N.E.2d 276 (Hamilton County 1985), a mother was convicted of child endangerment under O.R.C. 2919.22(A) when her daughter told her mother that her mothers live-in paramour had raped her and the mother failed to remove her child from the home or to expel the paramour.

If, therefore, the attorney reasonably believes that his client would be committing a breach of O.R.C 2919.22(A) by bringing her child back to a home where abuse has occurred and will likely occur, the attorney would be permitted under DR 4-101(C)(3) of the Code of Professional Responsibility to report any confidences or secrets indicating child abuse in order to prevent the crime of child endangerment.