

Ethics for DSS Attorneys: Some of the Many Ways Government Attorneys Can Get in Trouble

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DHHS findings suggest Bertie DSS director acted unlawfully

State evaluation finds serious problems in both child protective services and adult services, as DSS director in small Eastern NC county accepts retirement.

FAQ: What happened with Cherokee County's Department of Social Services?

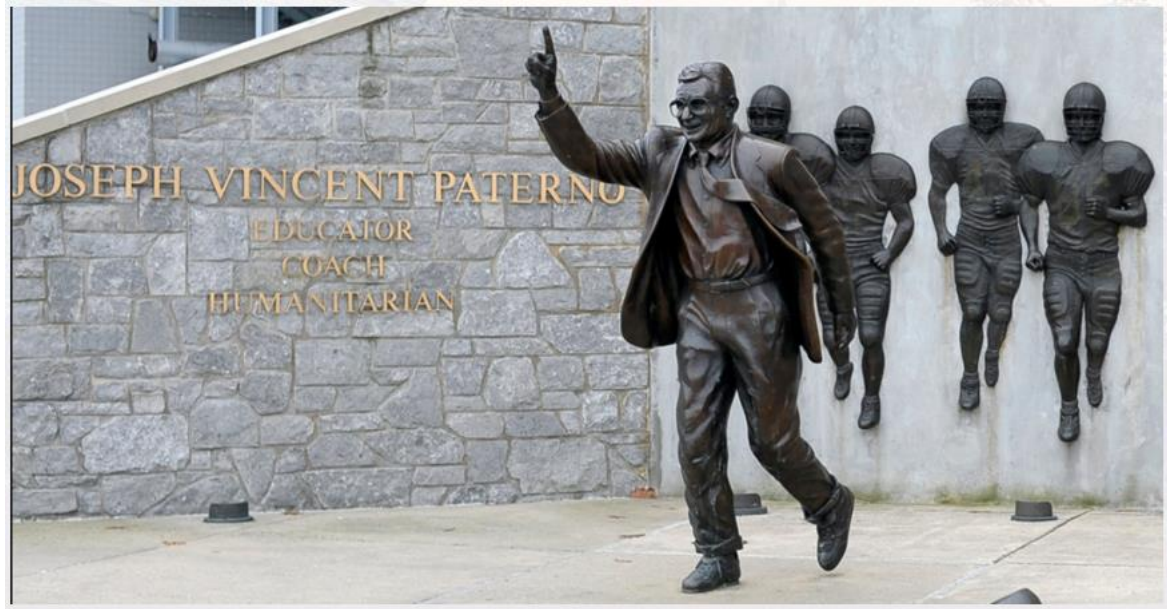
Get caught up on the unprecedented NC situation, which has left the county responsible for \$53 million in penalties and payments.

Criminal trial for Cherokee County's former social services attorney

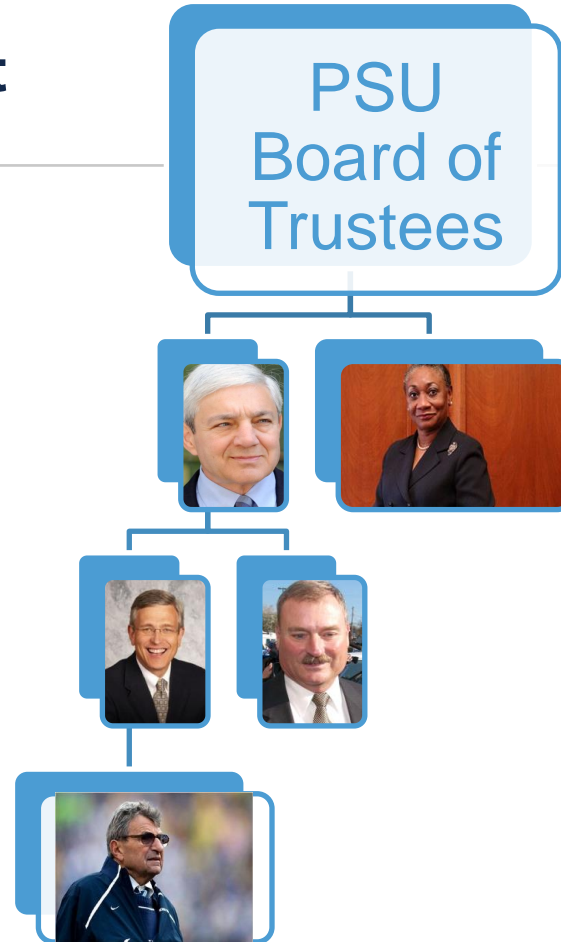
Three (of the many) Ways Government Attorneys Can Get Into Trouble

1. Client confusion
2. Social media miscues
3. Trial tribulations

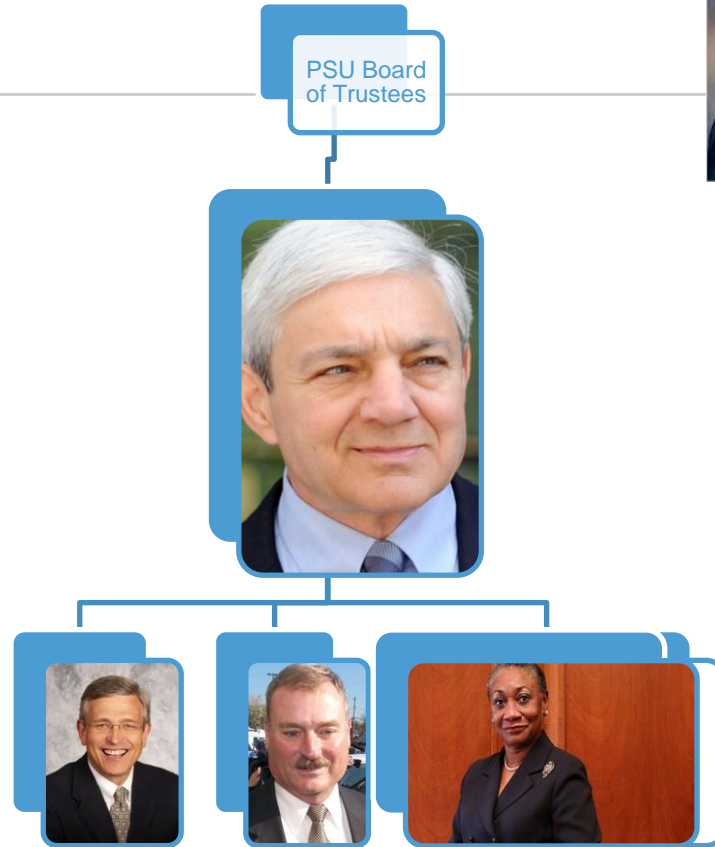
1. Client Confusion



Formal Org Chart



Reality



Two Fundamental Questions about Baldwin's Role

- Did Baldwin keep her client (the PSU Board of Trustees) adequately informed about the scandal?
- Did Baldwin's conduct lead Spanier, Curley, and Schultz to reasonably believe that she represented them individually?

MRPC 1.13(f): “Organization as Client”

- “[A] lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization’s interests are adverse to those of the constituents with whom the lawyer is dealing.”

MRPC 1.13(b): “Organization as Client”

- “violation of law which reasonably might be imputed to the organization”
- “likely to result in substantial injury to the organization”
- “the lawyer shall refer the matter to higher authority in the organization, including . . . to the highest authority that can act on behalf of the organization”

Rule 1.2:

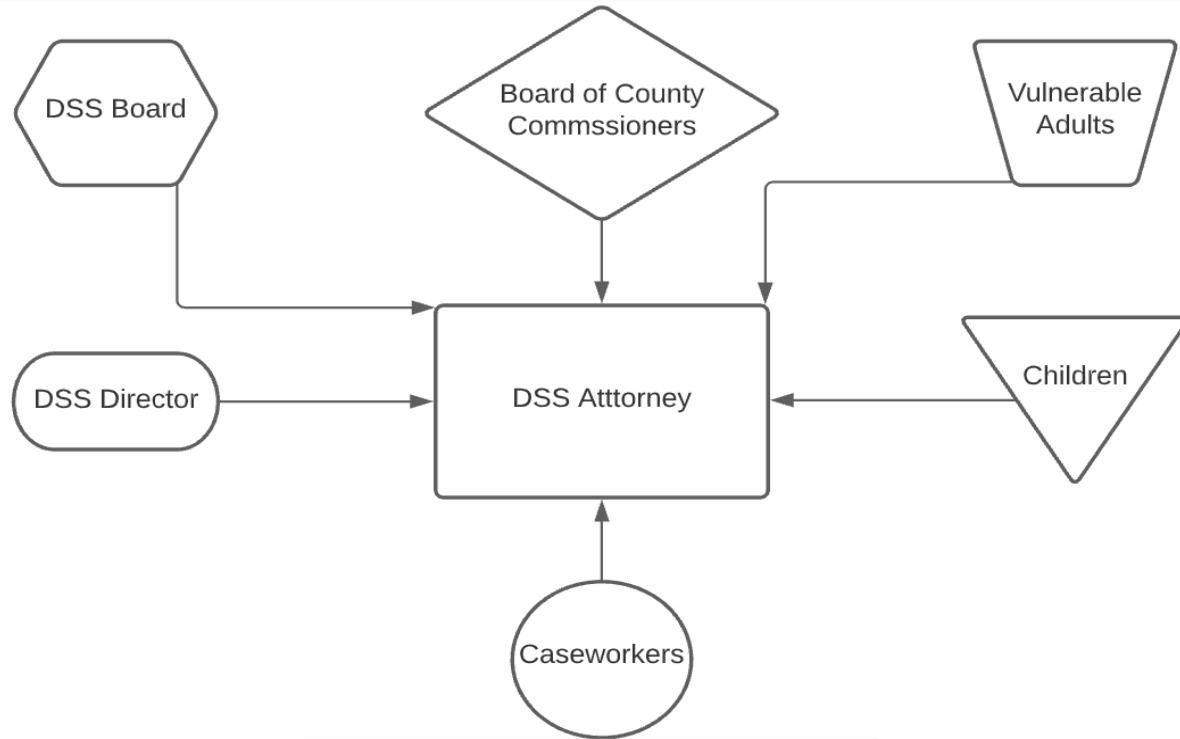
Scope of Representation & Allocation of Authority Between Client & Lawyer

A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

2020: PA Supreme Court Disciplines Baldwin

“It is impossible to conclude in light of the seriousness and solemnity of the warnings administered by the supervising judge that the [administrators] believed anything other than their personal interests were being protected by respondent. It cannot be fathomed that respondent did not understand that she was representing them personally.”

What you might face



What is your relationship with the DSS?

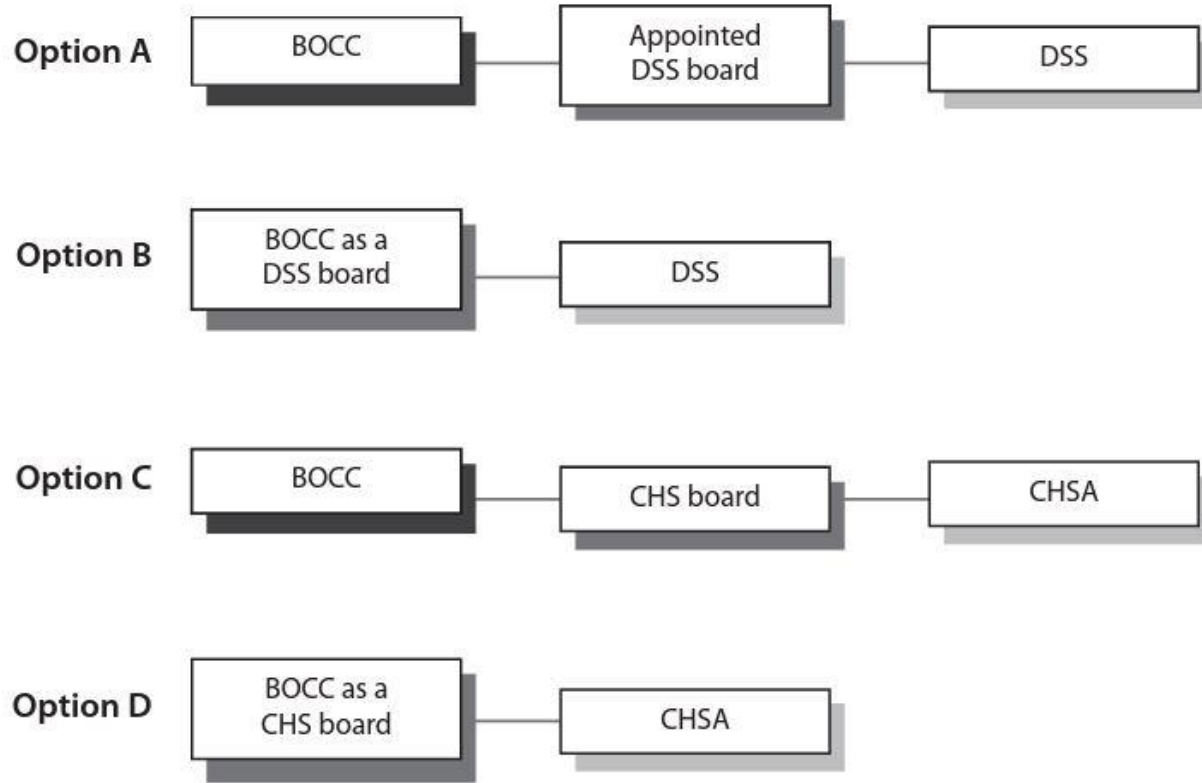
County attorney assigned to DSS

Attorney hired by the DSS

Outside counsel retained by the DSS

Other

Figure 1. County Organization and Governance Structures



How are your county's social services organized?

A (appointed DSS board)

B (BOCC is the DSS board)

C (appointed CHS board)

D (BOCC is the CHS board)

I don't know.

NC Rule of Professional Conduct 1.13

1. *Miranda* warnings for employees

2. Obligation to “report up”

- violation of a legal obligation to the organization
- violation of law which reasonably might be imputed to the organization

MRPC 1.13(f): “Organization as Client”

- *Upjohn* or “corporate *Miranda*” warnings
- “I represent the organization, not you.”
- “Anything you say can and will be used against you by the organization”

Lessons from PSU for Government Attorneys

- Keep agency leadership/board fully informed
- Clarify relationship to employees (*Upjohn*)

Discussion Questions

2. Social Media Miscues

NEWS

Nashville lawyer suspended after posting advice on how to make murder look like self-defense

Brinley Hineman Nashville Tennessean

Published 6:05 a.m. CT Jan. 23, 2021 | Updated 3:27 p.m. CT Jan. 26, 2021

LEGAL ETHICS

Lawyer is disbarred for 'social media blitz' intended to influence custody case and top state court

BY DEBRA CASSENS WEISS

JULY 8, 2015, 5:45 AM CDT

Facebook Post Earns Atty A DQ Bid In Cruise Injury Suit

By Joyce Hanson (May 31, 2016, 12:21 PM EDT) -- Carnival Corp. on Monday demanded the removal of a lawyer from a personal injury suit in federal court, charging that he posted



May you send a Facebook friend request to a potential litigation witness?

No. Don't be a creep.

Yes. Lawyers can be friendly, right?

Yes, but only if the party is not represented.



2018 FEO 5 (NC)

- Okay to view public portion of any person's social media sites
- Okay to request access to private portion of a person's social media sites if:
 - Person is not represented
 - No deception
 - Identify as attorney upon inquiry



Cuyahoga County prosecutor fired after posing as an accused killer's girlfriend on Facebook to try to get alibi witnesses to change their testimony

Updated Jun 7, 2013; Posted Jun 7, 2013



Centre County DA: I 'made a Facebook page that is fake to snoop,' email confirms

The admission from Stacy Parks Miller comes in a court filing by Bernard Cantorna, who's running against her.



Stacy Parks Miller, left, and a profile photo of "Britney Bella." DAN GRISWOLD/ THE DAILY COLLEGIAN;SCREENSHOT -- JAYNA WALLACE / BILLY PENN

“Law enforcement, including prosecutors, have long engaged in the practice of using a ruse to obtain the truth. I think the public is better off for what I did.”

Third Parties?

- Tina Tarheel is a potential witness against your client in pending litigation.
- Your paralegal Susan has been “friends” with Tina on Facebook for years.
- May you obtain access to Tina’s private Facebook posts thru Susan?

Can you look at Susan's Facebook account to see Tina's private posts?

No.

Yes, assuming
there was no
deception involved.

3. Trial Tribulations



What can you say about a witness?

“Mr. Taylor claims that there has been no use of illegal drugs at his residence in the past five years. However, we presented evidence that just one year ago Mr. Taylor’s cousin was arrested at Mr. Taylor’s residence for possession of cocaine. That proves that Mr. Taylor is a liar.”

What can you say about a witness?

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📱 Text **SOGCHRIS** to **22333** once to join

Is this a permissible argument?

Yes

No

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What can you say about the opposing party's witness?

“The respondent’s expert witness, Dr. Smith, testified that Mr. Taylor’s drug addiction no longer presents a barrier to him serving as a competent parent. However, do you know that Dr. Smith is getting paid by Mr. Taylor? And that Dr. Smith has testified for Dewey, Cheatum, & Howe, the law firm representing Mr. Taylor, more than 75 times? Dr. Smith has a strong incentive to say whatever that law firm asks her to say.”

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What Can You Say about Opposing Counsel?

“Attorney Smith has been brilliant. She prepared her client perfectly, picked just the right expert, and presented her case smoothly. Her efforts to deceive and mislead this tribunal have been masterful.”

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📱 Text **SOGCHRIS** to **22333** once to join

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General Rules for Argument

- A lawyer may not “engag[e] in undignified or discourteous conduct that is degrading to a tribunal.”
 - N.C. R. Prof. Conduct 3.5(a)(4)
- A lawyer shall not “allude to any matter . . . not . . . supported by admissible evidence, assert personal knowledge of facts in issue . . . or state a personal opinion as to the justness of a cause, the credibility of a witness . . . or the guilt or innocence of an accused.”
 - N.C. .R. Prof. Conduct 3.4(e)
- “[A]n attorney may not become abusive, inject his personal experiences, express his personal belief as to the truth or falsity of the evidence or as to the guilt or innocence of the defendant,” or argue matters not in evidence.
 - G.S. 15A-1230

