

# Communicating With Your Client

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## Overview

### The RPC and Client Communication

1. Who is Your Client?
2. Communicating When Interests Conflict
3. Communicating When Opinions Conflict
4. Guardrails and Boundaries
5. The Duty to Communicate

### Communicating With Social Workers

1. How to Accomplish Client Goals
2. Weighing Facts against Legal Standards
3. Practical Implications

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## Who Are You Communicating With?

A lawyer employed or retained by an organization **represents the organization** acting through its duly authorized constituents.

-Rule 1.13

**This gets more complicated in the government context:**  
 "Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules.  
 Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole."

Comment 9 to Rule 1.13

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# Who is Your Client?



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# Bottom Line on Rule 1.13

DSS attorneys represent the interests of the DSS, not the interests of individuals associated with the DSS

- Director
- Board member
- Social worker

BUT an organization can only act through its “duly authorized constituents”...



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# Communicating When Interests Conflict



“You’re our attorney, so anything I say to you is privileged, right?”



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## Communicating When Interests Conflict

### Upjohn Warning

1. The attorney represents the organization (here, DSS), not the individual employee;
2. The employee is being interviewed to assist the attorney in providing legal advice to the organization; and
3. The conversation between the attorney and the employee is privileged, but the attorney-client privilege *belongs to the organization*, not to the employee, so the organization can waive the privilege without consent from the employee.



#### Rule 1.13(f):

- "In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, 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."



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## Communicating When Interests *May* Conflict

### Rule 4.3:

- When dealing with any person who is not represented by counsel, the attorney must not:
  - Give legal advice to the person, other than the advice to secure counsel, if the lawyer knows or reasonably should know *that the interests of such person are or have a reasonable possibility of being in conflict with the interests of the client;* or
  - State or imply that the lawyer is disinterested.
- This applies to DSS staff, the director, and board members!
- Obligation to clarify this relationship also applies with respect to other individuals who may mistakenly believe they are the attorney's client, such as:
  - custodial parents in child support enforcement proceedings
  - caretakers in a termination of parental rights proceeding, or
  - vulnerable adults in need of protective services.



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## Communicating When Opinions Conflict

- **Rule 1.2:** Client retains "ultimate authority to determine the purposes to be served by legal representation."
- "On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected."

-Comment 2 to Rule 1.2



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### Communicating When Opinions Conflict

**ABA Guidance - Handling Conflict with Social Workers**

The agency attorney and agency should jointly develop a conflict resolution system to cover attorney-social worker conflict.

Attorney and social worker should start with a face-to-face meeting to try to resolve the conflict.



If there is no resolution, the system should delineate how each should go up their respective chains of command; and

The system should set out examples of issues that are legal and issues that are social work decisions, understanding that most issues will need to be resolved jointly.

The system should incorporate timeframes for resolution so as not to delay a case.

Attorney should help ensure that conflicts do not surface in court.

Ultimately, a DSS attorney should escalate a conflict to the DSS director if needed.

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### Communicating When Opinions Conflict

- Should generally follow the director's directions as the primary client representative for DSS, even if you disagree with the prudence of the director's decisions.
- Exception:** An actual or intended
  - (1) violation of a legal obligation to DSS/the county, or
  - (2) violation of law that reasonably might be imputed to DSS/the county IF it is likely to result in substantial injury to DSS and/or the county.

Look to Rule 1.13 (and SOG "Ethical Dilemmas" bulletin)

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### Guardrails and Boundaries

The director must not direct or regulate the attorney's professional judgment (Rule 5.4(d)).

The attorney must not assist the director or a social worker in the unauthorized practice of law (Rule 5.5(f)).

N.C.G.S. § 84-2.1 - "The "practice of law" means "performing any legal service for any other person, firm or corporation... specifically including... preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding... or assisting by advice, counsel, or otherwise in any legal work."

If a DSS attorney receives assistance from a social worker who is not a lawyer, the attorney must supervise all delegated work and retain ultimate responsibility for the work product (Rule 5.3)

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## Duty to Communicate – Rule 1.4

A lawyer must:

- 1 Promptly inform the client of any decision or circumstance with respect to which the client's **informed consent** is required by the RPC.
- 2 Reasonably consult with the client about the **means** by which the client's objectives are to be accomplished.
- 3 Keep the client reasonably informed about the **status** of the matter.
- 4 Promptly comply with reasonable **requests** for information.
- 5 Consult with the client about any **relevant limitation on the lawyer's conduct** when the lawyer knows that the client expects assistance prohibited by the RPC or other law.



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## Duty to Communicate – Rule 1.4

Comment 5 to Rule 1.4:

“The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved.....In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail.”



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## Where the Rubber Meets the Road

Practical Advice to Assist Social Workers in Understanding Challenging Legal Concepts:  
*Rule 1.4 in Action*



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## Minimum Standard of Care

**Safe Home:**  
 A home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.  
*N.C.G.S. § 7B-101(19)*




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## Neglect

- *Substantial risk* of physical, mental, or emotional impairment
- Substance Misuse → NEXUS
- Housing & Homelessness
- Safety Factors to Consider:
  - Age of child
  - Protective adult
  - Willingness to engage




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## Abused Juvenile: Emotional Abuse

<p><u>Serious Emotional Damage</u></p> <ul style="list-style-type: none"> <li>▪ Evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others.</li> <li>▪ <i>N.C.G.S. § 7B-101(1)(e)</i></li> </ul>	<p><u>Emotionally Abusive</u></p> <ul style="list-style-type: none"> <li>▪ Psychological Maltreatment</li> <li>▪ Terrorizing = caregiver behavior that threatens</li> <li>▪ Emotional Unresponsiveness</li> <li>▪ Spurning</li> </ul>
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## Dependent Juvenile

A juvenile in need of assistance because:

- (1) No parent, guardian, custodian responsible for care & supervision
- (2) Parent, guardian, custodian
  - I. Unable to provide care & supervision AND
  - II. Lacks appropriate alternative childcare arrangement

*\* Must prove both prongs for both parents*



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## Temporary Safety Placement

### Purpose & Parameters

- Safety during assessment
- Time-limited
- Case decision
- When is court intervention necessary?



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## Relative Placement Priority

- Relative: An individual directly related to the juvenile by blood, marriage, or adoption, including, but not limited to, a grandparent, sibling, aunt, or uncle. *N.C.G.S. § 7B-101(18a)*
- Willing & able relative to provide proper care & supervision in a safe home *unless placement contrary to the best interests of the juvenile.*
- Community of origin
- Nonrelative Kin: substantial relationship w/ child. *N.C.G.S. § 7B-101(15a)*



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## RIL Placement & Judicial Review


- ✓ Staff cases for Abuse or Serious Neglect Substantiations
- ✓ Director review & discretion  
*N.C.G.S. § 7B-323 (b1)*
- ✓ *Factors to consider*
  - ✓ Impact of RIL Placement
  - ✓ Court time
  - ✓ Know your judges

PETITION FOR JUDICIAL REVIEW  
RESPONSIBLE INDIVIDUALS LIST

ABUSE

SERIOUS NEGLECT

G.S. 7B-323



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## Reasonable Efforts

<p><b>Prevent Need for Placement</b></p> <ul style="list-style-type: none"> <li>▪ Diligent use of preventative or reunification services</li> <li>▪ Paramount concern = juvenile's safety</li> </ul>	<p><b>Implement Permanent Plan</b></p> <ul style="list-style-type: none"> <li>▪ Needed for Primary &amp; Secondary Plans</li> <li>▪ Whether to cease reunification efforts</li> </ul>
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