

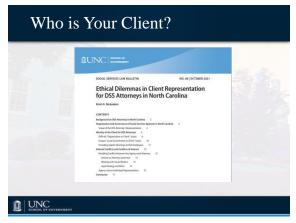
Overview The RPC and Client Communication 1. Who is Your Client? 2. Communicating When Interests Conflict 3. Communicating When Opinions Conflict 4. Guardrails and Boundaries 5. The Duty to Communicate Communicating With Social Workers 1. How to Accomplish Client Goals 2. Weighing Facts against Legal Standards 3. Practical Implications

UNC SCHOOL OF GOVE

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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."

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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?"

UNC NCHOOL OF GOVERNMEN

Communicating When Interests Conflict 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 attorney-client privilege belongs to the organization, not to the employee, so the organization can waive the privilege without consent from the employee. "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 lawaver is dealing." with whom the lawyer is dealing." I UNC

Communicating When Interests May Conflict

Rule 4.3:

- When dealing with any person who is not represented by counsel, the attorney
 - 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 <u>means to be used to accomplish their objectives</u>, 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

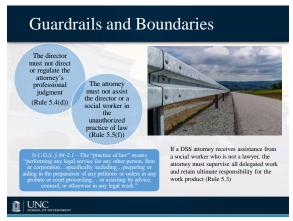
Client







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)





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

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) UNC 16 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 Serious Emotional Damage **Emotionally Abusive** • Evidenced by a Psychological juvenile's severe Maltreatment anxiety, depression, ■ Terrorizing = caregiver withdrawal, or behavior that threatens aggressive behavior Emotional toward himself or Unresponsiveness others. Spurning ■ N.C.G.S. § 7B-101(1)(e) I UNC

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)



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

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Prevent Need for Placement Diligent use of preventative or reunification services Paramount concern = juvenile's safety Needed for Primary & Secondary Plans Whether to cease reunification efforts