

Ethics: Preparing Your Client for Court

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Roadmap

**Rules of
Professional
Conduct**

**Preparing for
Court**

**Panel
Discussion**

Rules of Professional Conduct

Who is Your Client?

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

Who is Your Client?

Ethical Dilemmas in Client Representation for DSS Attorneys in North Carolina

Kristi A. Nickodem

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Who Decides What?

- **Rule 1.2, Comment 2:** “[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

ABA Guidance - Handling Conflict with Social Workers

“Standards of Practice for Lawyers Representing Child Welfare Agencies”

System should:

Give examples of issues that are **legal** and issues that are **social work** decisions

Establish timeframes for resolution

Start with a face-to-face meeting to try to resolve the conflict



If no resolution--system should delineate how each should go up their respective chains of command

Role Boundaries

Nonlawyer may not “direct or regulate” the lawyer’s professional judgment in rendering legal services.

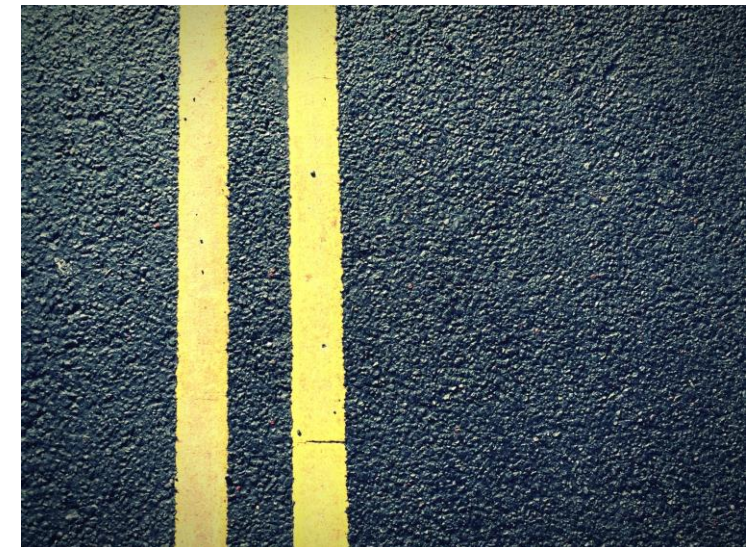
Rule 5.4(c)

The attorney must not assist a nonlawyer in the unauthorized practice of law

Rule 5.5(f)

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



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.

Duty to Communicate – Rule 1.4

Comment 5:

“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....

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.”

Witness Preparation

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 508

August 5, 2023

The Ethics of Witness Preparation

Rule 1.1 –
Competence

Rule 1.3 -
Diligence

Unethical Efforts to Influence Testimony

- **Rule 3.4(b)**—Cannot advise or assist a witness to give false testimony
- **Rule 8.4(d)** —Overtly attempting to manipulate testimony-in-progress would generally constitute conduct prejudicial to the administration of justice



Preparing Your Client

Court 101

Bring your case file
to court!



Trial Preparation

- Pre-Service Training
- Court Reports
- Pre-Court Staffing
- Issue Spotting
- Evidentiary Issues
- Mock Trials
- Debrief After Court



Keys to Effective Testimony

- Expect to be nervous.
- Speak loudly and clearly.
- Speak in everyday language.
- Listen carefully to the question being asked.
- Look and act professionally.
- Know your case.
- Credibility is PARAMOUNT.



ABA Formal Opinion 508

- Ethical Preparatory Conduct
 - Remind witness he/she is under oath.
 - Explain strategy and procedure.
 - Review documents and physical evidence with witness.
 - Suggest word choice to help make testimony clear.
 - Discuss cross-examination.
 - Emphasize importance of remaining calm.
 - Remind witness to tell the truth.

Panel Discussion

