

Legal Ethics: Discussion Problems for Social Services Attorneys

Problem # 1

Facts: You are participating in an in-service training program for your department's adult services workers. One of the trainers is an experienced adult protective services supervisor who is describing her experience in adult protective services (APS) cases involving caretakers who object to APS workers talking alone with the disabled adult who is the subject of an APS report. The trainer says: "If that happens, I just pull out my cell phone and tell the caretaker that I have a legal right to see the disabled adult and that I'll call the police and have them arrested if they prevent me from doing that. That's what the law says. It always works. And that's what you should do!" North Carolina's adult protective services law (G.S. 108A-103) states that "the [county social services] director shall have the authority to conduct an interview with the disabled adult with no other persons present." G.S. 108A-103 also provides that public and private agencies must "cooperate fully" with the county social services department in connection with APS cases.

(a) What ethical obligations, if any, do you have as the department's attorney to respond to the trainer's statement?

(b) What, if anything, would you say or do in response to the trainer's statement?

Problem # 2

Facts: The county social services department has filed a petition to terminate parental rights. No hearing is scheduled, since service on the father must be by publication. Pat, the DSS attorney, sends a subpoena to the Myrtle Beach (SC) regional hospital for the production, at Pat's law office, of copies of medical records relating to the mother's treatment for substance abuse. Pat has served a copy of the subpoena on the parties, through their attorneys, as required by Rule 45. The mother's attorney calls Pat and says that she will be filing a motion to quash the subpoena and that she will ask the juvenile court judge to discipline Pat for Pat's unethical conduct in issuing the subpoena.

(a) Did Pat act unethically in issuing the subpoena? Why or why not?

(b) If Pat has acted unethically, can the juvenile court judge discipline Pat with respect to Pat's conduct? Why or why not?

Problem # 3

Facts: On a Monday morning, Jerry, the only DSS staff attorney, is scheduled to be both at a specially scheduled guardianship hearing in superior court and at calendar call in juvenile court.

(a) Can Jerry send the DSS paralegal to the juvenile court calendar call to explain Jerry's conflict and absence? Can Jerry send a social worker to juvenile court to do so? Why or why not?

(b) Can Jerry instruct the paralegal to request a continuance for a case that is on the juvenile court calendar? Can Jerry instruct a social worker to do so? Why or why not?

Problem # 4

Facts: Mary, the IV-D attorney, has filed an action for child support against Barnes. The next week, Mary's former law partner stopped Mary on the street and said, "I represent Barnes. Guess I'll be seeing you in child support court but you can't get blood from a turnip." Barnes's ex-wife, the IV-D

client, tells Mary that the same attorney is representing Barnes in a child custody and support action filed by Barnes's current wife. Mary sends a IV-D worker to look at the civil custody file and to get copies of anything that might be relevant to the IV-D case. Learning that a hearing in that case is scheduled for the following week, she asks the IV-D worker to attend the hearing and take notes.

The IV-D worker tells Mary that the answer and counterclaim filed by Barnes in the child custody and support proceeding brought by his second wife alleges that he is debt free and that he earns about twice as much as he told his ex-wife he earns.

The worker also tells Mary that when she went to the hearing, she overheard Barnes talking loudly on his cell phone and telling the listener (apparently a broker) to "buy 100 shares of Merck." The worker tells Mary that when she heard this she said to Barnes: "Wow, Merck! I read that they were developing a new arthritis medicine!" and that Barnes responded: "Yep. I have 1,100 shares already and it's going to skyrocket!"

How much, if any, of this information can Mary ethically use in the IV-D case?

Problem # 5

Facts: You are a full-time DSS attorney. After work, a social worker approaches you and asks whether you, on your own time, could help her draft a divorce complaint, including a claim for custody. She does not want you to represent her in the divorce proceeding—just to help her draft the pleading, advise her about service of process, and talk to her about witnesses and evidence.

(a) Assuming that you want to assist the social worker and that your contract or job description does not prohibit you from doing so, can you do any of the things you've been asked to do without obtaining the written consent of the DSS director?

(b) Assuming that you want to assist the social worker and that the DSS director does not object, can you do any of the things you've been asked to do without making an appearance in the divorce proceeding or disclosing (or ensuring that the social worker discloses) your assistance to the court?

(c) Would your answers to these questions be different depending on whether the social worker paid or didn't pay you a reasonable fee for the legal services you provide?

(d) Would your answers to these questions be different if the situation involved a relative, friend, or neighbor who was not employed by the county DSS?

(e) Could you provide the requested assistance if the divorce and child custody action will be filed in Montana rather than North Carolina?

Problem # 6

Facts: In preparing an appeal in a guardianship case, you find online a brief filed several years ago in a case in which one of the issues was exactly like the main issue in your case. (The earlier case was decided on other grounds and appellate courts have never addressed the issue you are briefing.)

Can you cut and paste, verbatim and without attribution, in your brief the argument from the brief you found online?

Problem # 7

Facts: DSS has filed a petition to terminate parental rights, and it is being contested.

(a) Can you file discovery asking the parents to disclose how they entered the country and their citizenship status?

(b) If the parents are in the county illegally, can you report that information to ICE?