

## **Legal Ethics for Social Services Attorneys**

1. You have been hired as an assistant county attorney. You work under the direct supervision of the county attorney and serve at the county attorney's pleasure. Your responsibilities include representing the county social services department in juvenile proceedings (and handling other legal matters for the county as needed).

*Who is your client? What are your professional responsibilities to the county social services department, the county social services director, the county social services board, county commissioners, the county, or the state?*

*What should you do if there is a disagreement between the county social services director and the county attorney with respect to a legal matter involving the social services department?*

2. You are the staff attorney for the county social services department. An attorney who formerly represented the social services department in juvenile and child support matters and is now engaged in the private practice of law occasionally represents parents who are the respondents or defendants in juvenile or child support proceedings brought by the social services department.

*May the former social services attorney represent parents in juvenile or child support cases brought against them by the social services department? If not, what should you do? If so, under what circumstances may she represent those parents?*

*Would your answers be any different if the former social services attorney now serves as the attorney advocate for the juvenile guardian ad litem program rather than representing parents in juvenile or child support cases?*

3. You were hired as the county social services attorney three months ago. One of the cases you inherited was a proceeding to terminate parental rights, which was commenced by a motion filed in the original juvenile abuse, neglect, and dependency proceeding (in which the petition was filed four years ago). In your opinion, the TPR against the child's mother was a "slam dunk" but the TPR against the child's father was a "toss up" with respect to the grounds for terminating the father's parental rights and the child's best interest. At the end of the hearing, though, the juvenile court judge instructs you to draft an order terminating the father's and mother's parental rights.

The father's appointed attorney immediately tells you that she intends to file an appeal and suggests that you take a look at the verification (or lack thereof) on the original juvenile petition. When you look at the file, you see that the original juvenile petition was

not, in fact, verified and realize that the juvenile court, therefore, lacked subject matter jurisdiction over the juvenile proceedings.

You later hear that the father's attorney was bragging to another lawyer that she has known for some time that the original petition wasn't properly verified but was "biding her time," knowing that the lack of subject matter jurisdiction argument was her "ace in the hole" and not wanting to play that card in the hope that the social services department would decide to give custody of the child to her client and that the court would not terminate the father's parental rights.

*Has the father's lawyer acted unethically in failing to disclose to you, to other parties or their lawyers, or to the court, the court's apparent lack of subject matter jurisdiction? If so, what would you do?*

*How should (or would or could) you, consistent with your responsibilities under the Revised Rules of Professional Conduct, respond to the father's appeal based on lack of subject matter jurisdiction?*

4. You are the county social services attorney. The Court of Appeals has just affirmed, in an unpublished *per curiam* decision, the juvenile court's order finding that a child was an abused and neglected juvenile and placing the child in the custody of the county social services department. You strongly believe that there was no real basis for the appeal, that all the issues raised by the parent's lawyer on appeal involved matters of settled law, that the parent was represented competently by her appointed trial lawyer, that all of the juvenile court's rulings were legally correct, that the juvenile court's findings were supported by the evidence and the court's conclusions of law were supported by its findings, etc.

*Did the parent's appointed trial lawyer act unethically in signing the notice of appeal? If so, what would you do?*

*Did the parent's appointed appellate lawyer act unethically in failing to withdraw from representing the parent on appeal? If so, what would you do?*

5. You represent the county social services department in juvenile proceedings. The child welfare supervisor asks you to review a "confession of judgment" form that she has drafted (based on a form used by another county's social services department).

She says that the confession of judgment would be used in child protective services cases in which the department has substantiated neglect with respect to the parent's child, the parent has agreed that the child will be placed with a relative or other appropriate person as part of a child welfare safety plan, and the department has decided not to file a petition with the juvenile court. According to the supervisor, social workers would ask

parents to execute the confession of judgment at the time a child welfare safety plan is adopted and then file the confession of judgment with the clerk of superior court so that the relative or other person could act *in loco parentis* and the placement would be “legally secure” as required by state policy.

The confession of judgment states that the parent authorizes the relative or other person to have temporary legal and physical custody of the parent’s child, to provide for the child’s general welfare and social, educational, religious, physical, and health care needs, to place the child in school, to consent to medical treatment for the child, to provide medical, dental, mental health, and surgical care or hospitalization for the child, and to “act *in loco parentis*, exercising all parental rights and privileges (except relinquishment or consent for the child’s adoption) with respect to the child, provided that such actions are consistent with the child’s best interests.”

*How should you, consistent with your responsibilities under the Revised Rules of Professional Conduct, respond?*

6. You are the staff attorney who represents the county social services department in juvenile proceedings. The child welfare supervisor has asked you to file a juvenile petition with respect to a child who was neglected by her mother and placed, with the mother’s consent, in the care of the mother’s mother. The child’s mother has “failed to comply” with the department’s child safety plan. The supervisor feels that the child’s current placement with the mother’s mother is satisfactory but is concerned that the placement is not “legally secure” and that the child would be at risk if the child was returned to the mother’s care.

You feel that, given the “appropriate alternative child care arrangement” with the mother’s mother, there is no legal basis for claiming that the child is “dependent” (see G.S. 7B-101(9); *In re P.M.*, 169 N.C. App. 423 (2005)), that the case is so “weak” that the court is unlikely to find the child neglected, that the only reason the supervisor wants to bring the case is to “cover” herself and the department, and that bringing “weak” cases like this will result in overcrowding the juvenile court’s docket, undermine the attorney’s and department’s credibility with the juvenile court judges, and invite IDS attorneys to file Rule 11 motions against the social services department and attorney or file an ethics complaint against the social services attorney.

The social services director supports the supervisor’s decision, instructs you to file the petition, and says that you may be subject to disciplinary action for insubordination if you fail to do so.

*How should you, consistent with your responsibilities under the Revised Rules of Professional Conduct, respond?*