

## **Who is My Client? Ethical Conundrums in Client Representation**

*Please review the following hypothetical scenarios involving DSS attorneys facing potential ethical dilemmas related to client representation and the attorney-client relationship. Consider how the N.C. Rules of Professional Responsibility might guide an attorney in these situations.*

### **HYPO 1:**

After working on a number of cases involving one caseworker in your agency, it becomes clear to you that the caseworker has been unlawfully disclosing confidential information from DSS case files. The caseworker is well-intentioned—sharing information with third-parties in an effort to arrange certain services and activities for children in DSS custody—but after studying the relevant North Carolina and federal statutes and regulations, you are certain that such disclosures are not permitted in these cases. You escalate the issue to the DSS director on several occasions, but the director is unconcerned, feeling that these disclosures are just not that significant. You are concerned that this pattern of unlawful disclosures could create liability for the agency. What do you do?

### **HYPO 2:**

Same scenario as described in Hypo 1, but instead of unlawful activity, you simply see a pattern of caseworkers having case loads that are too heavy and sometimes doing a subpar job at carrying out their key duties. You don't see any clearly unlawful activity, just a pattern of forgetfulness and rushed work. You have escalated the issue to the DSS director, but the director's hands are tied—there is no funding in the budget for additional positions and the caseworkers are doing their best under difficult circumstances. What do you do now?

### **HYPO 3:**

The director of your agency comes to you and says she is worried that some caseworkers may be violating policy by accepting substantial gifts from foster parents. The director asks you to “dig around a little bit” to figure out what's happening and to determine whether any laws are being violated. When you sit down with one caseworker to ask her a few questions, she says “You're our attorney, so anything I say to you is confidential, right?” How do you respond?

### **HYPO 4:**

The director of your agency is sued for alleged negligence in the performance of her duties and Section 1983 violations. The lawsuit names the director in both her official and individual capacity. The Board of County Commissioners is concerned about the costs of hiring outside counsel to represent the agency in the litigation and asks if you can represent the director in the litigation. What should you do?