

**Legal Ethics for Social Services Attorneys:
Answers to Case Problems**

1. You are the staff attorney for the county social services department.

Approximately one year ago, the department received a report that a juvenile, Jane Doe, had been neglected by her mother. The department substantiated the child's neglect. The child was placed with the child's maternal grandmother with the mother's consent. No juvenile petition was filed. The mother "vanished" a couple of months ago (the grandmother says that mom is probably living somewhere in South Carolina with her new boyfriend and is doing drugs again). The director wants you to (a) draft a juvenile petition alleging that the child is neglected or dependent and requesting that the juvenile court place the child in the grandmother's legal custody, or (b) assist the grandmother in filing a civil action seeking legal custody of the child.

(a) Do the Revised Rules of Professional Conduct require, allow, or not allow you to draft a juvenile petition and represent the department in a juvenile AND proceeding in this matter?

- Rule 3.1: Lawyer may not assert a legal claim on behalf of a client unless the claim has a nonfrivolous basis in law and fact.
- Rule 1.2: Lawyer generally must abide by client's decisions regarding objectives of representation.
- Rule 1.13: Lawyer retained by organization or government agency represents the organization or agency acting through its duly authorized constituents, officials, etc. and must accept authorized representatives decisions regarding representation even if lawyer doubts utility or prudence.
- Rule 2.1: Lawyer must exercise independent professional judgment and render candid advice to client.
- 2006 FEO 9: Lawyer must withdraw if client insists on prosecuting legally frivolous claim. *See also* N.C.R.Civ.P. Rule 11.

(b) Do the Revised Rules of Professional Conduct allow you to provide legal assistance to the child's grandmother in connection with a civil child custody or adoption proceeding? If not, why not? If so, under what circumstances?

- Probably so. The primary question is whether there is a conflict of interest between DSS and the grandmother.

- Rule 1.7: Lawyer may not concurrently represent two clients if representation of one is “directly adverse” to other or would be “materially limited” by responsibilities to other. Lawyer may represent two clients with actual or potential conflict of interest if representation is not prohibited by law, lawyer reasonably believes she can provide competent representation to both, representation doesn’t involve claim by one against the other in same litigation or proceeding, and both clients give informed written consent.
- Rule 1.8(f): Lawyer may not accept compensation for representing a client from someone other than the client unless the client gives informed consent and payment does not compromise lawyer’s independence or professional judgment or the attorney-client relationship.
- RPC 139: Lawyer representing private adoption agency may not sign adoption petition for prospective adoptive parents as “accommodation” to agency unless lawyer assumes professional responsibilities as lawyer for parents, there is no disqualifying conflict of interest, and the parents consent to payment of the lawyer by the agency.

2. You are the staff attorney for the county social services department. You’re attending the social services attorneys’ summer conference in Atlantic Beach. It is 4:00 pm on Friday. You get a phone call from the child protective services supervisor. She says that there’s been an emergency that requires the immediate filing of a juvenile petition and request for a nonsecure custody order. She wants to know whether she can use one of the petitions from one of your pending cases as a “template” to draft the petition in this case and then sign the petition for you in your absence.

What would you tell her?

- You should tell her that she can draft the petition under your supervision and sign your name to it at your direction.
- Rule 5.5: Lawyer shall not assist another person in unauthorized practice of law.
- GS 84-2.1: Practice of law includes drafting petitions for another person.
- 2002 FEO 9: Lawyer may supervise drafting of pleadings, etc. by nonlawyer (paralegal, etc.).

- 2006 FEO 13: Lawyer may allow paralegal to sign pleading for lawyer (in lawyer's own name) with adequate supervision and in case of bona fide emergency.

3. You are the staff attorney for the county social services department. Sue Smith is a paralegal who is employed by the county social services department and works with you in juvenile proceedings. Sue tells you that when she was on her way to court this morning, she overheard the parent in one of your cases talking with her attorney in the hallway outside the courtroom and that the parent told her attorney: "Yeah, I was really messed up that night and I shook the baby to stop her from crying, but I didn't mean to hurt her." Sue also tells you that she paused for a few seconds to see what else she could hear.

Is it ethical for you to use this information in any way in connection with the pending proceeding? If not, why not? If so, under what circumstances and in what manner?

- You can probably use the statement by calling the parent and asking her to admit it, but should tell the paralegal that it would be unethical for her to "linger" or "eavesdrop."
- Rule 5.3: Lawyer who supervises paralegal must ensure that the paralegal's conduct is compatible with the RRPC and is responsible for conduct that would violate RRPC if paralegal was a lawyer.
- Rule 4.4: Lawyer may not use methods of obtaining evidence that violate legal rights of others. Query whether eavesdropping on lawyer's conversation violates "legal rights" with respect to privacy even if it is not unlawful under a criminal statute, etc.
- Rule 4.4: Lawyer who inadvertently receives writing related to subject matter of representation must promptly notify sender. Limits RPC 252, which prohibited lawyer from reviewing, retaining, or using privileged or confidential info that was inadvertently received.
- Rule 8.4: Query whether the paralegal's conduct in "eavesdropping" might be considered to be prejudicial to the administration of justice. *See* RPC 180: Lawyer may not passively listen to info disclosed by opposing party's doctor.
- Rule 3.7: A lawyer may act as an advocate in a proceeding in which another lawyer in the lawyer's firm testifies as a witness as long as there is no disqualifying conflict of interest on

the part of either lawyer. So, if the opposing party denies making the statement, the paralegal may testify to what she heard.

4. You are the staff attorney for the county social services department and represent the department in a pending juvenile proceeding. The judge tells you to draft an order finding the child abused and neglected in accordance with the evidence presented by the department and placing the child in the custody of the department in accordance with the reports and recommendations of the department and the GAL. The dispositional hearing was completed 28 days ago. You have just finished drafting the order.

Do the Revised Rules of Professional Conduct require you to send a copy of the order to the parents' attorneys and the GAL or attorney advocate before you ask the judge to sign the order?

- Rule 3.5: Lawyer shall not communicate *ex parte* with judge except as permitted by law, in the course of a legal proceeding, orally with adequate notice to the opposing party, or in writing if a copy is sent simultaneously to the opposing party. 97 FEO 5: Lawyer must send copy of proposed order to opposing party before submitting it to judge.

5. You are a partner in a law firm. For a number of years, you have been retained to represent the county social services department in juvenile proceedings. Last week, you filed a juvenile petition alleging that Jane Doe abused her two children. This week, the district attorney's office charged Jane with criminal child abuse. One of your law partners has been retained to represent Jane in the criminal proceeding.

(a) Can you represent the department in the juvenile proceeding involving Jane's children?

- Not unless DSS and Jane give informed consent in writing and both lawyers reasonably believe that they will be able to provide competent and diligent representation to each client and both lawyers protect any confidential information regarding the matter.

- Rule 1.7: Lawyer may not represent a client if representation of the client will be directly adverse to another client unless both clients give informed consent in writing and lawyer reasonably believes that he or she will be able to provide competent and diligent representation to each client. Absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter even when the matters are wholly unrelated.
- Rule 1.10: When lawyers are associated in a firm, none of them generally may represent a client when any one of them, if practicing alone, would be prohibited from doing so under Rule 1.7.
- CPR 96: When different attorneys in the same firm are employed to represent conflicting interests in related cases, *both* must withdraw.
- Rule 1.6: Lawyer must preserve confidences of client.

(b) Can your law partner represent Jane in the criminal proceeding?

- Same answer as above.

6. You represent the child support enforcement agency. John Doe owes more than \$10,000 in child support arrearages, all of which accrued before July 1, 1998. The agency just determined that Mr. Doe owns a \$5,000 certificate of deposit with a local bank and that he owns a boat that has a fair market value of \$25,000. The agency wants you to file a lien against the CD and boat or take whatever legal action may be necessary to collect the arrearage.

What would you do (remembering that the statute of limitations for enforcing child support arrearages is ten years from the date the arrearage accrued)?

- Rule 3.1: Lawyer may not assert a legally frivolous claim or defense, but 2003 FEO 13 holds that a lawyer is not prohibited from filing a time-barred claim on behalf of a client even when the defendant is unavailable and must be served by publication.