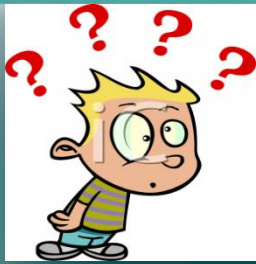


ROLE OF COUNSEL: PARENT REPRESENTATION IN YOUTH COURT CHILD WELFARE CASES

OSPD PARENT REPRESENTATION SEMINAR
Whispering Woods Hotel
June 15, 2017



What Are We Doing?

- Competence
- Scope of Representation
- Conflict of Interest
- Diligence
- Communication
- Confidentiality
- Unique Challenges When Representing Parents

COMPETENCE

- A lawyer shall provide competent representation to a client.
- Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

MINIMUM REQUIREMENTS FOR COMPETENT REPRESENTATION

**(as set forth in the MS Certification Performance
Standards)**

- Adhere to all relevant training and mentoring requirements before assuming representation of a parent involved in a child welfare or termination of parental rights proceeding.

Cont'd

- Utilize knowledge of all relevant federal and state laws, rules, regulations, and policies necessary to analyze and assess the factual and legal elements of issues pertaining to all phases of the representation and to provide sound legal advice in resolving or addressing issues.



Cont'd

- Advise the parent of federal and state requirements for achieving permanency for the child in a timely manner.

Cont'd

- Exercise skill in all areas of procedural practice applicable to the proceedings, including that of authorized procedures for obtaining documents and information that may affect the parent's rights and interests, depositions, motions, and hearings.

Cont'd

- Pay thorough attention to details important toward reaching a *favorable outcome for the parent.*
- Zealously protect and pursue, within the bounds of the law, the *parent's rights and interests.*

SCOPE OF REPRESENTATION

- An attorney representing a parent in child welfare proceedings shall *abide by the parent's decisions concerning the objectives of the representation* within the limits imposed by law and the attorney's professional obligations.

- Attorney should assure the parent of the attorney's *obligation to zealously protect and pursue the parent's rights and interest.*

Representational Roles

- **Advisor**

- Provides parent with an informed understanding of their legal rights and obligations and explains their practical implications.



- **Advocate**

- Attorney zealously asserts the parent's interest.



- Attorney *does not substitute* their judgement or opinions in decisions that are the responsibility of the client.

- Attorney shall protect the parent's rights including:
 - Right to visitation
 - Right to services
 - Right to information and decision making while the child is in foster care or other temporary placement.



General Rule: *Unless inconsistent with the client's goals*, counsel shall strive to work collaboratively to resolve matters.

It Shall Be Made **Clear** And **Unambiguous** That Parent's Attorney's Are ...

Independent
of the Court



Accountable to
their Clients

AND



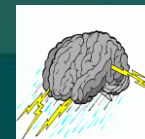
CONFLICT OF INTEREST



- An attorney *shall not* represent a parent in a child welfare case if the representation will be adversely affected, or materially limited, by obligations or responsibilities owed to another client or by the attorney's own interests.

Unless

- The risks associated with that conflict are reasonably minimal and the parent has given knowing and informed consent after being fully advised of the adverse consequences that could occur from those risks.



- Parents should have separate counsel in most situations.

Potential Problem Resulting From Withdrawal

Could cause a prolonged delay in achieving the parent's goal of reunification with the child.



What Steps Can You Take To Avoid A Conflict Of Interest?

- Carefully assess whether dual or multiple representations could impair the attorney's obligation to zealously protect and pursue the separate and distinct rights and interests of each party.
- Think Ahead - Consider any conflicts of interest that might arise in the course of representing multiple parties and the possible adverse consequences that could result.

DILIGENCE

- An attorney representing a parent shall act with
- reasonable diligence and
- promptness
- at every stage of the proceedings
- to protect and pursue the parent's rights and interests.



COMMUNICATION



- The attorney shall fully and promptly inform the parent on all legal aspects of the case affecting the parent's rights so that the parent may participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.

- The attorney should, to the extent permitted by law, update the parent regarding the child's safety and well-being concerning custody, care and plans for permanency.
- These matters should be explained in a manner that allows the parent to make informed decisions regarding the representation.

CONFIDENTIALITY



- The attorney shall not reveal information relating to the representation unless :
 - the parent gives informed consent for the disclosure,
 - the disclosure is impliedly authorized in order to carry out the representation, or
 - the disclosure is otherwise required by law.

- Further, the attorney shall not reveal the confidential records of children or others that have been acquired in the course of the representation except as required by law.
- Disclosure of Records are covered by:
 - MS Code Ann. Sections 43-21-251 through 43-21-267.
 - MS Rules of Youth Ct. Practice, Rule 5(b).

UNIQUE CHALLENGES WHEN REPRESENTING PARENTS

TRUST

- Trust is crucial in forming a good attorney-client relationship.

The Value of Trust



Why Is Trust Important?

Barriers to Trust

- Parents accused of maltreatment may be frightened and appear hostile and confrontational. Removal of their children may make them distrustful of the system, including their attorney.
- Parent meets court appointed attorney for the first time in the courthouse immediately following or just prior to the removal of their children – just another person in the system taking their child(ren).



What Are
Some Ways to
Remove the
Barriers to
Attorney-Client
Trust?

DEFINING THE CLIENT'S GOALS

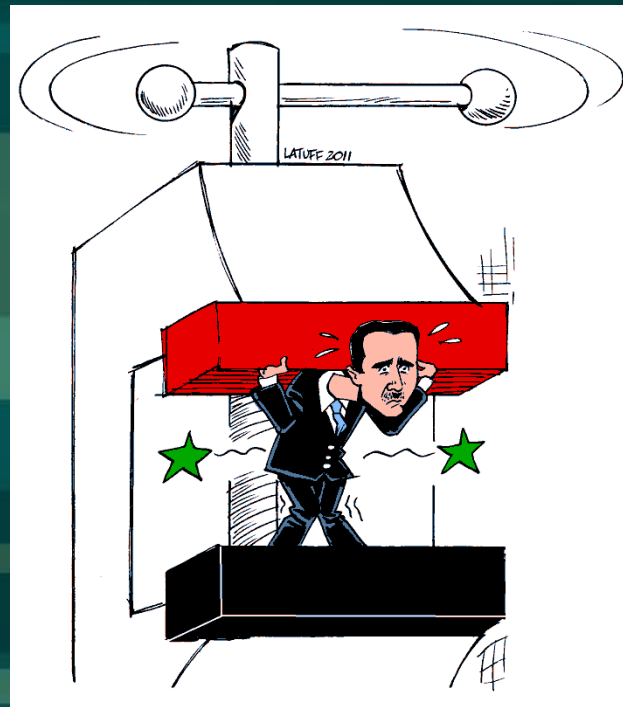
- Soon after the representation begins the attorney must help the parent define their goals.
- Identify the parent's overall goal.
 - Typically goal is to reunify the family.
- The attorney must also identify the short and long term goals, such as placement, visitation, and services.

- The attorney should help the parent establish realistic goals for the representation.
- The attorney should provide objective feedback about the client's stated goals and guide the client toward goals that can be achieved.
- Most parents want their attorney to analyze the likelihood of achieving their goals. So attorney's must give objective, carefully considered advice.



Past X Future

INSTITUTIONAL PRESSURES



Examples

- Attorneys may receive low compensation and high caseloads which discourages active (zealous) advocacy.
- Attorneys may face pressures to convince their clients to enter a plea giving the court jurisdiction rather than going to trial.

Cont'd

- The attorney may perceive a need to please the judge, who may control the attorney's appointment in future cases, or controls their contract.
- Attorneys that zealously advocate for their clients may be chastised by other parties who believe that the parent's goals conflict with what they think is in the best interest of the child.

Regardless of the Pressures

- Parent's attorneys must remember that their paramount obligation, under both the rules of professional conduct and the standards discussed is to zealously advocate on behalf of their client.

- If an attorney is unable to fulfill their ethical responsibilities to the client, the attorney should immediately request to withdraw.
- Under no circumstances do the rules of professional conduct permit an attorney to deviate from the basic requirements set forth in the rules.





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