

Legal ethics and high child welfare worker turnover: An unexplored connection

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Abstract

This article, which grew out of a series of 11 focus groups with child welfare workers and supervisors, explores how legal ethics may increase the stress child welfare workers experience in carrying out their duties and may contribute to high rates of turnover. A number of workers experienced their interaction with lawyers and the legal system as extremely stressful. Others misunderstood the role of a lawyer. This article considers the various sources of legal and social work ethics and standards of practice at work in lawyer–social worker interaction in the child welfare context and provides a comparison of legal ethics with social work ethics on a number of dimensions. Ethical issues such as defining the client, confidentiality, client loyalty and zealous advocacy are considered. Additionally, issues which are not specifically ethical in nature but are closely related are considered. These include efforts to be objective in handling the work, the personal affront experienced by many child welfare workers when their judgment is called into question and methods of communication. The article concludes that there is a need for training to assist child welfare workers to understand legal ethics and how they contribute to high turnover rates.

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1. Introduction

I remember going to court and doing a termination [of parental rights case] and I felt like I was a piece of meat and the sharks were swimming around me and taking little pieces out of me. And then I remember we had a break and one of the attorneys said, “I don’t know why you’re taking this personally.”

Suburban Child Welfare Worker

The child welfare labor force has long experienced elevated turnover rates ([American Public Human Services Association \[APHSA\], 2001](#); [General Accounting Office \[GAO\], 2003](#)). In the public sector, one recent study found

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that on average 20% of the front line child welfare workers and 11.8% of first line supervisors turn over annually (APHSA, 2001). Even more concerning, a 2005 study of the Bureau of Milwaukee Child Welfare found turnover rates of “ongoing case managers” to be between 34% and 67% (Flower, McDonald, & Sumski, 2005).

High caseworker turnover rates have been correlated with increased impermanence experienced by children in the child welfare system (Flower et al., 2005). Flower et al. (2005), in their study of Milwaukee County’s child welfare system, found that as caseworker turnover increased, the child’s likelihood of achieving permanency within a set period of time decreased. Thus, when a child had only one worker for the duration of the study period (January 2003 through September 2004), 74.5% of children achieved permanency, whereas only 17.5% of children who had two caseworkers achieved this goal within the same timeframe. When children had six or seven caseworkers, they achieved permanency in only 0.1% of the cases.

Some commentators have noted that high turnover rates are an operational factor that complicates the relationship between child welfare agencies and courts (Carnochan et al., 2002). For example, as Flower et al. (2005) have observed, “worker changes may result in delays in court hearing producing docket delays as cases are rescheduled” (p. 3). In turn, the stress related to their interactions with lawyers and courts, including caseworkers’ perceived lack of professional status within the legal system, may contribute to high child welfare worker turnover rates (Flower et al., 2005; Lawson & Claiborne, 2005). To understand more fully and to address issues of child welfare labor force recruitment and retention in child welfare practice, in 2003 the Children’s Bureau awarded training grants to 8 schools of social work around the country.

The University of Michigan School of Social work received one of those training grants. As part of that grant, members of the recruitment and retention project conducted 11 focus groups with child welfare front line workers and first line supervisors in three counties in a large, industrialized, mid-western state. The most populous county is largely urban, containing the state’s largest city, and has a population of approximately 2 million residents, approximately 546,000 of which are children (Michigan League for Human Services, 2006). The second largest is primarily suburban, with a total population of approximately 1,214,000 and a child population of about 294,000. The smallest county, too, is primarily suburban and has a total population of approximately 830,000 with 193,000 children. One-half of the state’s child welfare population is contained in these three counties.

We discovered that a number of child welfare workers experience their interaction with lawyers as so stressful that it constitutes a key contributing factor to burnout and turnover. These findings are consistent with the findings of Carnochan et al. (2002), who have observed that difficult interprofessional relationships between lawyers and child welfare workers contribute to child welfare staff turnover. A number of explanations have been offered for this interprofessional tension (Weil, 1982). With rare exceptions (e.g., Russel, 1988), lawyers’ professional ethics have not been explored as a factor underlying this tension and resultant job stress. Consequently, lawyers’ professional ethics have not been carefully analyzed as a factor contributing to child welfare workforce turnover.

This article builds on data gathered during the focus groups to describe ethical conflicts between lawyers and child welfare workers that seem to underlie the stressful interactions child welfare workers experience with lawyers and the legal system. Because “social work degrees are the most appropriate degrees for the [child welfare] field of practice” (National Association of Social Workers [NASW], 2005, p.7), this article will, in certain instances, compare and contrast social work and legal ethics and standards of practice.¹ It is the theme of this article that much of the interprofessional tension child welfare workers experience results from their lack of understanding of lawyers’ professional ethics and their roles when representing a client.

2. Child welfare workers and the legal system

Practice of their profession increasingly brings social workers into contact with the legal system (Lynch & Brawley, 1994; Madden, 2000; NASW, 2004; Weil, 1982). Lynch and Brawley (1994) observed more than a decade ago that “much of social work practice is affected by the law and most social workers can expect to have some contact with the judicial or legal system in the course of practicing their profession” (p. 66). This trend continues today and is likely to continue well into the 21st century (Lynch & Brawley, 1994). Few areas of social work practice are more heavily

¹ One to one comparisons of legal and social work ethics based upon an analysis of the professions’ respective ethical codes is not possible. This article seeks to identify principles of legal ethics that relate to their interactions with child welfare workers and to compare them when possible to ethical principles held by the social work profession.

involved in the legal system than child welfare (Hardin, 2005; Lynch & Brawley, 1994; Roby, 2001; Russel, 1988; Stein, 1998; Taylor, 2006).

The heavy involvement of social workers in child protection legal proceedings stems in part from the fact that social workers were instrumental in establishing the nation's juvenile court system at the turn of the 20th century (Lynch & Brawley, 1994). Moreover, the interaction between lawyers and social workers in child welfare practice is inevitable because, as the United States Supreme Court has repeatedly held, when the state, through its child protection apparatus, intervenes into family life in an effort to protect a child, it challenges the fundamental constitutional rights of that child and those parents (*Lassiter v. Department of Social Services*, 1981; *Santosky v. Kramer*, 1982). Moreover, federal funding statutes enacted in the past quarter century have dramatically increased the role of courts in handling child welfare cases (Taylor, 2006). As Mark Hardin of the American Bar Association's Center on Children and the Law has noted, social workers working in child welfare "must constantly be mindful of legal expectations and requirements" (Hardin, 2005, p. 689). As Professor Theodore Stein points out, however, lawyers and social workers approach their professional lives from radically different perspectives (Stein, 1998). Lawyers and courts look to what has transpired before, to history, to precedent, while social workers look to the future. Stein writes: "When judges follow precedent, they are saying, 'What has been done in the past is what will be done in the present.' When social workers make decisions, they must ask, 'Is what was done in the past useful for the future?'" (p. 9) He implies that if what has been done in the past is no longer useful, social workers will disregard the old and will seek a new, presumably better, way. As just one example, consider the introduction of child welfare innovations such as intensive family intervention services (Annie E. Casey Foundation, n.d.; Schuerman, Rzepnicki, & Littell, 1994). Moreover, the National Association of Social Workers Code of Ethics (NASW, 1999) explicitly commands social work professionals to work as change agents for the poor and oppressed. Lawyers are much less likely to seek economic and social justice and are less concerned with broader societal implications of their work on behalf of individual clients (Aiken & Wizner, 2003).

The American legal system is by its nature adversarial and formalistic. That is, it is designed to reach the truth that underlies a particular conflict through the presentation of one's position and a direct, public confrontation with one's adversary. Through this process, the system explicitly seeks to air grievances, consider alternative explanations for an occurrence, and challenge assumptions. This testing of the adversary's case is accomplished through the presentation of evidence, the testimony of witnesses, documents and other tangible items (e.g., photographs of a child's injuries, an implement used to inflict harm upon a child) and through confrontation and the vigorous cross-examination by leading questions of witnesses identified with one's adversary. This process all takes place in a public or quasi-public forum. Many social work commentators have called for less adversarial process and more collaboration in child welfare proceedings (Carnochan et al., 2002; Duquette, 2005; Taylor, 2006; Weil, 1982).

Because of child welfare's intense connection with legal proceedings, child welfare workers come into direct, repeated and often diametrically opposed contact with lawyers. Weil (1982) correctly observed that after the United States Supreme Court decided *In re Gault* (1967), which required juvenile court proceedings to meet basic due process requirements, juvenile court proceedings became more adversarial. Child welfare workers are not typically used to working in such a directly confrontational manner (Hardin, 2005). Such confrontational interactions with lawyers are a source of stress for child welfare workers.

Numerous commentators have observed the ethical conflicts that may arise when lawyers and social workers align to work together on behalf of a mutual client (Anderson, Brenberg & Tremblay, 2007; Harris & Bernstein, 1980; Peters, 1989; Weil, 1982; Zavez, 2005). But as Russel (1988) has observed, "Even though caseworkers often make protestations to the contrary, parents and caseworkers are adverse parties in these legal actions" (p.211). Moreover, children's lawyers, as independent advocates for their child clients, may come into conflict with the child welfare worker regarding the goal to be achieved in a case or the means of achieving the articulated goal.

The authors have been unable to locate any scholarly writing that carefully considers how legal ethics set lawyers and child welfare workers on a collision course—both inside and outside the courtroom—which social workers doing child welfare work experience as daunting and sometimes as personal attacks. Additionally, lawyers are sometimes perceived as inconsistent in their approach to a case, sometimes attacking and at other times agreeing with the child welfare worker. Assisting child welfare workers in understanding the ethical issues that underlie the aggressive and seemingly erratic behavior of lawyers may decrease the stress associated with these interactions.

3. Attorneys' roles in child welfare practice

A case handled in our adversarial system of justice is often referred to metaphorically as a “battle” or a “war,” and lawyers are often described as “champions” of their client’s position (Keane, 1996). As their clients’ champions, lawyers are charged by the ethical rules of the profession with independently investigating a case and aggressively protecting their clients’ interests, which very often brings them into direct conflict with child welfare workers (Hardin, 2005; Michigan Compiled Laws Annotated [M.C.L.A.] § 712A.17d, 2007). Child welfare cases typically involve at least four attorneys—for the agency, for each parent and for the child(ren). A child welfare worker’s relationship with any one of these lawyers may be a source of conflict.

Such direct conflict may come from both the parents’ attorney and the child’s lawyer or guardian ad litem. The child welfare worker’s relationship to the agency’s attorney, while less conflicted than their relationships with the attorneys for the parents and children, nevertheless may be a source of conflict and confusion. Next, this paper will briefly consider the roles of the attorneys for the various parties in a child welfare proceeding.

3.1. Role of parents' attorneys

The role of the attorney for parents in child welfare cases is the clearest and most easily defined. The Model Rules of Professional Conduct (American Bar Association [ABA], 2007), which in the legal profession is analogous to the National Association of Social Worker’s Code of Ethics and forms the basic ethical structure for professional practice, make clear that it is the attorney’s ethical responsibility to pursue the goal established by the client. Assuming the client is capable of exercising considered judgment and has set a goal that is within the law, it is the attorney’s job to single-mindedly pursue that goal. Thus, in a case where a parent is alleged to have physically abused a child and the parent denies the allegation and instructs her attorney to seek the child’s return to the parent’s custody, it is the lawyer’s responsibility to do all that she can within the confines of the law and the legal system to see that the child is returned to the parent’s custody. As noted earlier, parents and child welfare workers are in adverse postures in child protective proceedings, and child welfare workers should expect lawyers for parents to be aggressive in protecting their clients’ interests and pursuing their goals.

Because the parent’s lawyer’s duty is to pursue the interests of the client, they will sometimes have a seemingly inconsistent reaction to the child welfare worker, at times being combative and aggressively opposing the worker’s efforts, while at other times being more cooperative and conciliatory. Consider the continuum of a child welfare case in which the parent engages a lawyer as soon as children’s protective services becomes involved with the family. In such a case, the parent’s attorney may advise him or her not to cooperate with an investigation, to refuse to discuss the alleged abuse or neglect or to decline to take a requested drug screen. Why would the lawyer render such advice? In the vast majority of child welfare cases, the evidence on which the allegations are founded comes directly from the parent; she admits to using drugs, drinking excessively or hitting her child, or voluntarily provides a drug screen which proves positive for illicit substances. In such a situation, the parent has provided the state with the evidence that is used to substantiate the allegations. To forestall a finding that the case is substantiated, a lawyer may initially advise her client not to cooperate in ways that can be used against the parent to prove a case or, if necessary, later in a court proceeding.

Once a case is substantiated and before the child is removed from parental custody, the lawyer will likely counsel the client to fully cooperate with the child welfare workers to prevent removal. Indeed, the lawyer may actually advocate with the workers for more services to prevent the possibility of removal, and to ensure that the state meets its burden of providing “reasonable efforts” necessary to prevent removal.

If the worker later petitions the court, the attorney who seemed cooperative, who urged her client to fully comply with services, may once again become an aggressive adversary, challenging the efforts made to preserve the family and the professional competency of the child welfare worker in order to prevent the court from finding that the lawyer’s client maltreated his children. Assuming the court finds a basis for action based upon the parent’s abuse or neglect of the child, the attorney will once again become seemingly more cooperative, again advising the client to fully cooperate and seeking appropriate services for her client.

If the child welfare worker files a petition to terminate parental rights, the lawyer will be at her most aggressive. Termination of parental rights has been called the death penalty of family law (Woodhouse, 2005). The finality and severity of termination will elicit from an ethical lawyer her most aggressive, most insistent response. She will be duty-bound to, as a worker in one of our focus groups described it, “fight us tooth and nail.”

While these responses may seem inconsistent, they are not. An ethical lawyer must do all that the law permits her to do to advance her client's interests and achieve the client's goals. This will nearly always mean testing the efficacy of the child welfare worker's handling of the case and may require shifting tactics as the facts and approach to the case taken by the child welfare worker changes. While child welfare workers may applaud lawyers who are less aggressive—or who work more “collaboratively” with them—such a lawyer may be behaving in an unethical manner.

3.2. Role of child's attorney

The role of the child's attorney in child protective proceedings is less clear than that of the parent's attorney, and has been vigorously debated among legal scholars and practitioners for a number of years (Sobie, 2006). The attorney's role when representing a child will depend upon the law of the jurisdiction in which the child protective proceeding is held. As with the parent's attorney, a child's lawyer must generally pursue the legitimate goals established by the client. This is the rule for children's attorneys in a number of jurisdictions, and the child's lawyer in such a jurisdiction is duty-bound to use her professional skills to achieve the goals articulated by the child–client (Sobie, 2006). For example, in Massachusetts the Committee for Public Counsel Services, which oversees the appointment of counsel for children in care and protection proceedings, has made clear that “Counsel for a child owes the same duties of undivided loyalty, confidentiality, zealous advocacy and competent representation to the child as is due an adult client.” In its commentary to this rule, the Committee explains that “Although the child's position may overlap with the position of one or both parents, third-party caretakers or the Department of Social Services (DSS), child's counsel should be prepared to present his or her client's *position* [italics added] independently...” (Committee for Public Counsel Services, n.d., 1.1(d) and commentary). Note that the attorney representing the child is prohibited from representing the child's best interests but must, instead, represent the child's articulated position. Similarly, the ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases provide that the child's attorney should typically maintain a traditional attorney–client relationship with the child client, taking direction from the client (ABA, 1996, B-4). Practicing within those standards, the attorney must pursue the child's expressed wishes unless the child is so young or immature that he or she is disabled by minority pursuant to Model Rule 1.14, which provides:

- (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished . . . the lawyer shall, as far as reasonably possible, maintain a normal client–lawyer relationship with the client. (ABA, 2007)

The commentary to Model Rule 1.14 (ABA, 2007) elaborates on the attorney's duty, specifically addressing the representation of children in cases regarding their custody. It provides:

The normal client–lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client–lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody.

An example will illustrate the operation of these rules. If an 8-year-old child was allegedly sexually abused by his mother and the child–client expresses to his attorney his desire to return to his mother's custody, the attorney for the child in a jurisdiction that has adopted the general rule that the child's lawyer must represent his wishes is ethically bound to pursue that goal unless the lawyer deems that the child is so impaired due to his youth and immaturity that he cannot make reasoned decisions on his own behalf. But even if the lawyer deems the child impaired, the lawyer must still maintain the normal attorney–client relationship to the extent possible, but may need to seek the appointment of a guardian ad litem or other advocate to substitute judgment on the child's behalf.

While the lawyer in our example must pursue the goal of return home, she may also seek to assure the child's safety by advocating for the provision of various services such as individual counseling for the mother and the child and periodic, unannounced visits by child welfare workers.

The Preamble to the Model Rules provides that the lawyer's specific ethical duties may be altered by the law—statute, court rule or appellate case law—of the jurisdiction in which the lawyer practices (ABA, 2007, Model Rules, Preamble [14]). In some jurisdictions, the law requires the child's lawyer in child protective proceeding to pursue what the lawyer determines to be in the best interests of the child, what lawyers generally refer to as a substituted judgment model of representation (Sobie, 2006). Michigan law, for example, requires that the lawyer for the child—called a “lawyer–guardian ad litem” to indicate that the child must be represented by a lawyer who fulfills the role of a guardian ad litem—is to “serve as the independent representative for the child's best interests” (M.C.L.A. § 712A.17d, 2007). If our example were handled in such a jurisdiction, the lawyer would not be duty-bound to pursue a return to parental custody because that is the child's expressed wish, but is free to determine whether the child's expressed wishes are consistent with what the attorney believes would serve the child's best interests. In determining what is in the child's best interests, however, the lawyer is typically required to consider the child's expressed wishes (e.g., M.C.L.A. § 712A.17d(i), 2007) and to inform the court of the child's preferences (e.g., M.C.L.A. § 712A.17d(i), 2007).

Some commentators have argued that children who are the subject of child protective proceeding need advocates who fill two different roles. In such a scheme, the attorney would determine the best interests of children who are considered too young and immature to direct their legal representation while older youth would be in a position to set the goals of their representation (Duquette, 2000, 2006).

To understand the role of the child's lawyer, the child welfare worker will need to have a basic understanding of the state's law on this point. Regardless of what role the jurisdiction's law assigns to the lawyer representing the child, there is potential for conflict between the child's lawyer and the child welfare worker. Returning to our example, the child welfare worker will quite reasonably be focused primarily on protecting the child from further predation at the hands of his mother and to provide necessary therapeutic responses to both the child and his mother. The Child Welfare League of America (CWLA) Standards of Excellence for Services to Abused or Neglected Children and Their Families provides that “*Keeping children safe from child abuse and neglect is the foundation on which child protective services was established and should always be the first goal of any child protective services response.*” (CWLA, 1999, p. 1; italics in original).

Because the child welfare worker's primary focus will be on the child's safety and the lawyer's focus often will be on the child client's expressed wishes, there will inevitably be times when the two are in conflict. For instance, in some jurisdictions, when representing an older child, the client's safety may not be the lawyer's primary consideration because she is duty-bound to focus on the child's expressed wishes. Moreover, even in situations where the child's lawyer is charged with representing the child's best interests, there may be conflicts because the child welfare worker and the lawyer may disagree about what action or services will serve the child's interest. In such circumstances, the child welfare worker may raise questions about the attorney's professional expertise in second guessing the worker.

3.3. Role of agency attorney

“If they and the prosecutor agree, boy they are the best social worker in the world... If they don't agree it's, you know, down on the mats fighting.”

Child Welfare Supervisor

In a 1988 article on the professional relationships between lawyers and social workers, Russel reported evidence of “a substantial level of hostility between caseworkers and welfare department attorneys in one large urban county” (p.214). Like Russel, we found evidence of this type of hostility, which is aptly illustrated by the following vignette related during one of our focus groups by a child welfare supervisor from a suburban county in which the agency is represented by the prosecuting attorney's office:

A worker was in the courtroom and she said something, and basically all she did was misspeak. She didn't say something terrible but it was not said exactly the way the prosecutor liked and he went off on her. She kept apologizing to the point that I finally pulled her out of the room and said, “You don't have to apologize. You have the right to your opinion and can express it any way you want.” But some of the workers are not really very experienced and self-confident. They can be totally cowed by these people...”

The Model Rules (ABA, 2007) address the lawyer's ethical responsibilities when she represents an organization rather than an individual. Model Rule 1.12(a), Organization as Client, provides that "A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents."

As noted earlier, lawyers are ordinarily required to advocate for their clients' expressed wishes and are not permitted to substitute their own judgment for that of the client's. In the context of the agency's lawyer there are questions about who exactly the client is—the agency or the individual worker. In practice, some agency attorneys may disregard the instructions of the individual worker in a case if the lawyer believes that worker's actions are inconsistent with the agency's policies. One child welfare worker in a suburban county focus group pointed out the job stress that can result when the policies of the child welfare agency, the prosecutor's office and the court are inconsistent. She observed,

You look at the policies and procedures and the expectations of the prosecutors, other community agencies and we don't all meet in the middle; we don't all have common ground. We all have different expectations and different things we are looking at doing. When DHS [the Department of Human Services] doesn't jibe with the prosecutor of the court...because of our policies and procedures, what we are doing as a job, we're the outcasts, we can't talk to anyone and say, 'Okay, here's why. Here's the reason why things are going the way they are.' You know you have to answer to everybody, everybody, doesn't matter why, everybody's your boss.

The specific agency employing the lawyer may influence the lawyer's handling of cases. Depending on the jurisdiction, the agency's attorney may be an employee of the state's child welfare agency, another state agency (e.g., the attorney general's office) or the county office of the state's attorney. The ethical duties of the agency's attorney may depend upon the entity that employs the lawyer and the arrangement between that organization and the child welfare agency. Some agency attorneys act in the role of "legal counselor" or "advisor" to the agency rather than in the role of an "attorney" who actively represents the agency. In some jurisdictions, for instance Illinois, the state's attorney routinely represents the state (*Illinois Compiled Statutes Annotated § 705 ILCS 405/1-6*) while a separate agency attorney represents the state child welfare agency, but only when there is concern that the court would make a "no reasonable efforts" finding or that the court would enter orders requiring the agency to pay for services not recommended by the agency (B. Boyer, personal communication, May 23, 2007).

When the lawyer is not acting as an "attorney" for the agency, it is sometimes the case that the lawyer will be operating as something of a free agent, not bound by the direction of the caseworker or other agency personnel. For example, in some jurisdictions, the agency is represented by the prosecutor's office, which may be legally required to exercise independent judgment on behalf of "the people" of the state rather than at the direction of the caseworker or other child welfare agency staff member, such as the casework supervisor (Herring, 1993). Russel (1988) recognized the conflict between child welfare caseworkers and their lawyers as an added source of job stress.

In one of our focus groups a child welfare supervisor spoke to the tension and stress caused when the prosecutor's office, representing "the people," takes an approach in a case that is different from what the child welfare agency personnel have outlined. "When the prosecutors jump in and do whatever they do and remove these children and devastate families," the supervisor explained, "then we're lumped in with them because the general public can't differentiate between the social worker and the prosecutor and the judge and we're—our lips are sealed because we can't even speak about the case. It's very frustrating."

3.4. Unrepresented child welfare workers

"We're always on our heels trying to figure out where the hell we're supposed to go with this. 'You didn't know what you were doing because you didn't know that I need that in your petition?'" Child Welfare Worker.

The social work literature has long recognized the need for social work professionals to have access to legal counsel (Fogelson, 1970). The *CWLA Standard of Excellence for Services for Abused or Neglected children and Their Families* (1999) establishes the aspirational goal of universal access by child welfare workers to legal counsel for purposes of consultation and representation in the courtroom. Standard 4.8 provides: "The child protection agency should have access to legal counsel, and its staff should routinely consult with legal counsel before initiating any court action or appearing in court." Unfortunately, the day-to-day practice for many child welfare professionals falls far short of this ideal.

Russel (1988) has noted that due to “a scarcity of attorney time,” (p. 210) social workers in many jurisdictions draft some legal pleadings. These may include initial petitions, supplemental petitions and, at times, motions seeking a particular court action such as reconsidering a prior decision. Too often, child welfare workers are required to draft legal pleadings and to appear in court without legal representation. A child welfare supervisor in one of our focus groups discussed the difficulties her staff had due to lack of access to legal assistance can cause:

Here in [my] County, we don't have representation so you go it alone. And that can be very frustrating to an employee because now you're an attorney as well as a social worker as well as an individual. And we don't have the legal background to be able to stand there and state our case like our opponents can.

The lack of access to legal counsel and representation in the courtroom disadvantages child welfare workers. A casework supervisor attending one of our suburban focus groups observed that, “As a practical matter...caseworkers, because they are neither lawyers themselves nor represented by lawyers for the most part, they probably have the lowest status in the courtroom.” Clearly, the lack of ready access to legal counsel and the resultant need to take on responsibilities for which they are not properly trained contributes to the stressful work conditions with which child welfare workers must contend.

4. Sources of ethical principles for lawyers and social workers

Just as the NASW has promulgated a Code of Ethics (NASW, 1999), both state and national bar associations establish codes of ethics for lawyers. The ABA's Model Rules, which “provide a framework for the ethical practice of law,” is the premiere legal ethics code in the country (ABA, 2007, Preamble [16]). Table 1 provides, as much as possible, a side-by-side comparison of ethical duties of lawyers and child welfare (social) workers discussed in this article.

Each state has adopted rules of ethics applicable to lawyers that are adapted from the Model Rules, which guide lawyers practicing child welfare law in that jurisdiction. Additionally, the ABA has adopted separate, non-binding standards of practice for lawyers representing parents and lawyers representing children in child abuse and neglect proceedings (ABA, 1996, 2006). These Standards of Practice are comparable to the Standards of Excellence established by the Child Welfare League of America (CWLA, 1999).

At both the state and national level, committees of lawyers interpret the jurisdiction's ethical rules and issue opinions. Those opinions, as well as statutes, court rules, and cases decided by appellate courts, are additional sources of ethical rules or guidelines for attorneys. Whatever set of ethical rules a particular jurisdiction has adopted, there is a committee of the Bar that is charged with enforcing those rules and has the authority to reprimand, sanction or disbar lawyers for unethical conduct.

5. Lawyers' specific ethical duties

Several specific ethical duties may impact upon the relationship between lawyers and child welfare workers. These include duties of confidentiality, zealous advocacy, and loyalty to the client.

5.1. Duty of confidentiality

Like social workers, lawyers are under a duty to protect confidential client information. Historically, the precise origins of the attorney–client privilege are not entirely clear, however, it is clear that the privilege between a client and an attorney has existed in some form at least since the sixteenth century, which makes it the oldest of the professional privileges (Thompson, 2000).

Model Rule 1.6 establishes the basic modern rule of confidentiality (ABA, 2007). It provides that “A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent.” This general rule goes on to note that “disclosure is impliedly authorized in order to carry out the representation” (ABA, 2007, Model Rule 1.6(a)). Thus, a lawyer may use information gleaned from the client to advance the client's goals in the case, but will do so only in a way and at a time that advances the client's interests. A lawyer typically will not share information simply to fully inform the child welfare worker regarding the case, as doing so may violate the lawyer's duty of confidentiality.

Table 1
Comparison of lawyer and child welfare ethical considerations

Ethical principle	Lawyer	Child welfare (social) worker
Sources of ethical guidance	ABA Model Rules of Professional Conduct as adapted by each jurisdiction; ABA Standards of Practice for lawyers who represent children in abuse and neglect cases; ABA Standards of Practice for lawyers representing parents in abuse and neglect cases	NASW Code of Ethics; NASW Standards for Social Work Practice in Child Welfare; Child Welfare League of America, Standards of Excellence for Services for Abused or Neglected Children and Their Families
Definition of client	A singular duty to an individual client; must avoid actual or potential conflicts of interest that may arise from the representation of others.	May be individual or family. Child safety is paramount concern, followed by family preservation. Potential conflicts of interest are inherent in child welfare practice.
Confidentiality	Duty of confidentiality has its roots in common law rather than statutory law and is included in professional ethics codes. Oldest of the professional privileges. Very few exceptions to duty of confidentiality.	Confidentiality established along ethical guidelines. Protected by statute except when duty to client is outweighed by duty to community (e.g., mandated reported of child abuse or neglect, client is danger to self or another, duty to warn).
Advocacy	Duty to zealously advocate—generally for client’s articulated wishes so long as those wishes are legal. May be required to pursue goals for client that although legal are not socially responsible.	Promote client’s “socially responsible self-determination.” May not see self as aligned with one party or another in a child welfare case. Advocacy is taught as a social work skill. Advocate for services for a class of clients within social services or political system.
Loyalty	Singular duty of loyalty to client even when client’s interests are different from or adverse to the interests of larger society. Assumes that conflicts or potential conflicts of interest “interfere with the exercise of professional discretion.”	Strong commitment to clients’ “well-being.” Client’s interests generally primary. Must balance child safety and family preservation in decision-making. Should avoid conflicts of interest “that interfere with the exercise of professional discretion.” NASW Code Ethical Standard 1.01; 1.06.
Objectivity	Has no pretense to objectivity. Duty is to advance client’s subjective interests. May be more objective when counseling client regarding the case.	Strive to be objective. Use tools such as structured decision-making and risk assessments in an effort to remove subjectivity from decision-making.
Taking it personally	Are trained and expected not to take personally attacks by other lawyers in the course of legal representation.	May feel personally and professionally attacked when judgments and actions questioned by lawyers. As witnesses, their credibility is always an issue when testifying or reporting to the court, which may result in attacks that feel very personal.
Methods of communication	Communications typically formal. Generally prohibited from communicating with another party directly and must communicate through that party’s lawyer. May be exception to talk directly with child welfare workers. May be prohibited by ethical rules from disclosing all he or she knows about a case or client; will disclose only information that is helpful in advancing client’s interests; will disclose information when and in a format that is most likely to advance client’s interests.	Communication typically informal personal communications. Value open communication. Will sometimes be affronted by failure of lawyers or judge to communicate directly. May believe that lawyers have behaved in less than trustworthy manner due to their failure to disclose information or to withhold information until a particular time.

While strong, a lawyer’s duty of confidentiality is not without limits, although exceptions applicable to lawyers are much more narrowly drawn than those for social workers. A social worker may disclose confidential information “when disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client or other identifiable person” (NASW 1999, 1.07(c)). Under the Model Rules, exceptions relevant to child welfare practice permit a lawyer to disclose confidential information only “to prevent reasonably certain death or substantial bodily harm” or “to comply with other law or a court order” (ABA, 2007, Model Rule 1.6(b)(1) and (6)). Unlike social workers, who may be required to reveal confidential information of past wrongs (e.g., a client reports a prior incident in which he sexually abused his step-daughter), a lawyer is generally not permitted to report such past behavior by a client. The Model Rules make clear that the attorney–client privilege may be pierced when necessary to comply with a statute or court order. For example, while most states do not mandate that lawyers report suspected child abuse by a client (e.g., Michigan; M.C. L.A. § 722.623, 2007; New Hampshire Revised Statutes Annotated § 169-C:32, 2007)), a few states specifically require lawyers to report suspected child maltreatment (Mosteller, 1992; e.g., Mississippi Code Annotated § 43-21-353 (1), 2007), and still others mandate that any person with knowledge of suspected abuse or neglect of a child report (e.g., Indiana Code Annotated § 31-33-5-1, 2007). Every state, by comparison, requires social workers to report suspected child maltreatment (Stein, 1998).

The aggressiveness with which a lawyer will protect client confidentiality is critical to child welfare practice because a lawyer may know many things about a client that would be relevant to the child welfare worker's understanding of the case and assessment of the risks involved. However, except in the very narrow circumstances set out above, the lawyer may act unethically by sharing this information with the child welfare worker.

Similarly, while a lawyer cannot ethically make a knowingly false statement to a court (ABA, 2007, Model Rules, 3.3 (a)(1)), she is well within her ethical mandate to keep confidential information that would inform the court's decision-making if that information, in the lawyer's view, would not advance the client's goals. That is, a lawyer is under no duty to disclose all that she knows about a client or a subject in the case to the court. Indeed, a lawyer who is too forthright with the court may run afoul of her ethical duty to protect as inviolate her client's confidences. For example, if a child welfare worker has brought to the court's attention a case involving a single incident of inappropriate discipline which constitutes child abuse under state law, and the parent's lawyer is aware of several additional incidences of the same type of behavior, it would be unethical for the lawyer to disclose those other instances to the court without the client's informed consent that disclosure may harm his or her position in the proceeding and make achievement of the client's goals less likely. As a practical matter, most lawyers in this circumstance would assume the client would not want the information disclosed and would not raise the issue with the client, but would not volunteer the information to either the child welfare worker or the court. In part to protect just this type of confidential information, a lawyer typically cannot represent a person if the lawyer will be a witness in the case (ABA, 2007, Model Rule 3.7).

5.2. *Duty of zealous advocacy*

The Preamble to the Model Rules makes clear that "As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system" (ABA, 2007, Preamble, Model Rules [2]). That is, as the comment to Model Rule 3.1 states, a lawyer "has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure" (Model Rule 3.1[1]). At the same time, a lawyer has the responsibility "to use the law's procedures only for legitimate purposes and not to harass or intimidate others" (Model Rules, Preamble [5]). A lawyer fulfills her competing duties when she meets her "obligation zealously to protect and pursue a client's legitimate interests . . . while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system" (Model Rules, Preamble [9]).

5.3. *What advocacy is not*

"[I]t makes it very difficult for a person to feel like they're a professional when they're going in and making professional recommendations and then are shot down by the other people who are supposed to be a part of the team." Casework Supervisor.

This statement by an experienced casework supervisor exemplifies a fundamental misunderstanding about the role of the attorney in representing a client. It is critical to recognize that the only attorney who is "part of the team" to which the child welfare worker belongs is the attorney who represents that worker. It is a grave mistake to think the attorney for a parent or a child—or the judicial officer—is necessarily part of the child welfare worker's team. So, before discussing what the duty of zealous advocacy is, it is helpful to pause to consider what this duty implies that the lawyer's role is not.

5.4. *Is there a duty to disclose information or to be "honest"?*

First, as noted earlier, a lawyer has no duty to disclose all that she knows about the case. When a lawyer does disclose information, she will do so in a manner and at a time and place that is most advantageous to her client's interests. Thus, a lawyer may be congenial and easygoing during a staffing of the case at the agency office or during discussions about a case in the hallway of the courthouse before the hearing. Then, before the judicial officer in the courtroom, become confrontational and use information in a way designed to make the child welfare worker look incompetent or as if she has not carefully thought through the case.

An example: consider a case in which the rights of a child's parents' have been terminated, and the child placed in foster care with a permanency goal of placement with a relative for adoption but in which the child has had to move

from a long-term foster home to a short-term foster home as a result of a licensing complaint. In this case, the child is 11-years-old and has expressed a desire to move to the relative's home as soon as possible. The agency has a plan to return the child to the long-term foster home for two to three months then to move the child to the relative's home. Upon learning about the plan during a meeting at the agency before the court hearing, the child's lawyer makes known no objection to the child welfare worker's plan. At the hearing, however, the lawyer questions the worker about the agency's plan to re-place the child to the long-term foster home then move the child to the relative. Then, in argument to the court she objects to the agency's plan and insists that the agency move the child to the relative as soon as practicable, and, indeed, objects that the child never should have been placed in the short-term foster home but should have been placed directly with the relative. In such a situation, the child welfare worker is made to look incompetent before the court and his judgment is called into question. The worker may feel angry because the attorney never expressed any concern to him in their direct meeting. But the lawyer owes no duty to the child welfare worker; her duty is to the child's wishes or best interests. The point is that lawyers will make strategic decisions about when and how to challenge child welfare decision-making processes as well as the substance of the decisions that are made, and they will decide to raise issues in a way and at a time that they think most likely to advance their client's interests. This can leave child welfare workers feeling "sandbagged" because the lawyer has not raised any concern with them, say, before a hearing, then, in the middle of the hearing, the lawyer may challenge both the process by which a decision was made and the substance of that decision.

Child welfare workers may feel that such tactics run afoul of the social worker's ethical responsibility of integrity, to behave honestly and in a responsible fashion (NASW, 1999, Value: Integrity). Additionally, child welfare workers may perceive that such behavior by lawyers violates the social work profession's ethic to work cooperatively with members of other professional groups (NASW, 1999, 2.01).

5.5. Objectivity

Child welfare decision-making has been resoundingly criticized as too subjective (Besharov, 1998; Lowry, 1986–1987; Roberts, 2002). In 1995, Thomas Curran observed that "decision making by 'gut' reaction has been common in CPS practice" (p.15). In an effort to move away from subjective decision-making, most state child welfare agencies have developed safety and risk assessment tools in an effort to enhance objectivity and to gauge the likelihood of future harm to a child (Curran, 1995; DePanfilis, 1996). In Michigan, for example, not only has the state child welfare agency adopted safety and risk assessment tools, but the state has also enacted legislation that mandates a categorization of cases for differential response based upon the worker's assessment of the child's safety and risk of future harm (M.C.L.A. § 722.628d, 2007).

How does this situation compare to an attorney representing a client? When acting in the role of an advocate, lawyers are under no obligation to be objective regarding their clients. Indeed, as a zealous advocate for a client, a lawyer may at times be precluded from being too objective; a lawyer who is too objective with regard to her client's case may be behaving unethically. While child welfare workers must strive to be objective and to balance the child's need for safety with the family's need to be unified and to remain intact, a lawyer will have no pretense to such a balancing act. She will singularly seek to attain the goals of her client or, if representing the child, his or her best interests, in whatever way the law permits.

When lawyers withhold information, time the disclosure of information to best serve the interests of their clients, and refuse to see a case through a lens of objectivity, some child welfare workers feel betrayed, tricked or taken advantage of. They may perceive that lawyers think of the important work of protecting children from abuse and neglect as a mere game to be won. These perceptions can cause child welfare workers to feel frustrated and angry, and that their difficult jobs are being made unnecessarily more difficult. These tactics, which may seem to violate social work ethical standards prohibiting dishonesty, fraud or deception (NASW, 1999, 4.03), are ethical and proper as a matter of legal ethics. We will return to the issue of objectivity later, in our discussion of the lawyer's duty of loyalty.

5.6. What zealous advocacy requires

For child welfare workers, unaccustomed to the confrontational, sometimes hostile, and always trying tactics and environs of legal advocacy in and outside the courtroom, the lawyer's duty of zealous advocacy can be daunting. To better understand the lawyer's role as a zealous advocate, it is helpful to consider carefully the meaning of the word

“zealous.” The American Heritage Dictionary of the English Language defines “zeal” as “Enthusiastic devotion to a cause, an ideal, or a goal and tireless diligence in its furtherance” (Soukhanov et al., 1992, p. 2075). That same dictionary defines “zealot” as “a fanatically committed person” (p. 2075). A synonym for “zealous” is “fervent” (p. 2075). Understanding the terminology used to define a lawyer’s ethical duty as an advocate begins to explain elements of their behavior that many child welfare workers find difficult to understand and to cope with. As a social worker said in one of our focus groups, “You got people hiring their own attorneys to fight you and they’re fighting you tooth and nail.” This is precisely the responsibility of a lawyer, to advocate with zeal for her client. When a lawyer does not zealously advance the interests of the client, she is not fulfilling her professional ethical responsibility to the client.

The adversarial process and zealous advocacy are at their zenith in the courtroom during cross-examination. Consider this comment by a child welfare supervisor working in a suburban county: “Workers who can’t ever stick up for themselves or for what their recommendations are in the courtroom are less effective at getting those recommendations accepted by the court, even though they may be the absolute correct recommendations.” For many child welfare workers, no part of their interaction with lawyers or the legal system is more daunting than the crucible of cross-examination, when they must “stick up for themselves” and defend their work. Conversely, many lawyers speak of cross-examination with great reverence. Law students are socialized to believe that “cross examination is ‘the greatest engine ever invented for the discovery of the truth’” (Carey, 2005, p. 433). Cross-examination has two basic purposes. First, it tests the witness’s (here the child welfare worker) understanding of the facts of the case. If the worker has made assumptions, acted on less than persuasive information or failed to adequately document his action in a case, these shortcomings will be pointed out to the court. Attendant to the testing of the worker’s understanding of the facts, the cross-examiner may also challenge the witness’s theory and conclusions. For example, a lawyer may vigorously cross-examine the child welfare worker about his understanding of attachment theory, the dynamics of child abuse and neglect, or a child’s suggestibility. This will be particularly true if, as sometimes happens, the child welfare worker is permitted to testify as an expert witness.

Secondly, cross-examination tests the witness’s veracity. This aspect of their involvement in the legal process can be especially difficult for child welfare workers. As one casework supervisor explained, “We have staff [members] that come back really demoralized as a result of being over at court and being put down, literally, in the courtroom on record.” In any legal proceeding, a witness’s credibility—his truthfulness—is always at issue, and a child welfare worker should expect that his honesty will be vigorously tested by the lawyers for the parents and children. During cross-examination, every aspect of the worker’s handling of a case, as well as his professional credibility, may be called into question.

In any hearing relating to a child welfare case, at least one lawyer, and often times two, and on occasion three or more, will represent a client who disagrees with the social worker’s position or recommendations. Consider a case in which the caseworker is recommending to the court that the child’s mother receive unsupervised visits with her child one time per week. The parent’s lawyer, having taken her direction from her client, will almost certainly advocate for more frequent or longer unsupervised visits, if not an outright return of the child to the parent’s custody. Conversely, the child’s lawyer may disagree that the parent has made sufficient progress in the treatment plan to warrant any unsupervised visitation. The child’s father may oppose an increase in contact between the child and the mother, but rather may believe he is more appropriately situated to have unsupervised contact with his child. As noted earlier, the state child welfare agency may be represented by a lawyer who is legally required to represent “the people” rather than act as the agency’s lawyer in the traditional sense. The agency’s lawyer may disagree with the mother’s lawyer, the child’s lawyer, the father’s lawyer and the child welfare worker; she may believe that the time has come to pursue termination of parental rights. The lawyer representing each of these positions has an ethical duty to advance the client’s interest, perhaps through direct confrontation and cross-examination of the worker. Each may question the worker using leading questions; each may be very aggressive in seeking the desired end.

5.7. Taking it personally

Because lawyers are quite used to working in the adversarial environment of legal practice, their sense of professionalism includes unwritten rules about not taking courtroom disagreements and confrontations personally. Lawyers can be adversaries and great competitors in the courtroom, yet be cordial, even friendly, outside the courtroom. As the Supreme Court of Iowa observed more than a century ago, albeit in a non-child welfare context, “It is not to the discredit of a lawyer that he champions the cause of his client with zeal and earnestness, and hard words spoken in the heat of trial are easily overlooked and forgotten” (Morse v. Times-Republican Printing Company, 1904,

p. 874). But as the comment from the suburban county worker quoted earlier makes clear, for child welfare workers whose professional credibility and personal integrity may be challenged in the courtroom, participation in the legal process can feel very personal.

While a lawyer may feel a sense of professional respect (Carnochan et al., 2002) or even camaraderie with a child welfare worker outside the courtroom, she may be aggressive and confrontational in the courtroom. Similarly, in one case a lawyer's client's interests may be aligned with the social worker, while in the next case the same lawyer is aggressively opposed to the social worker's handling of the case. These situations, which to lawyers make sense because of their duty to advocate zealously for only one party to a case, may be very confusing for child welfare workers, who value a sense of honest dealing and straight-forwardness (NASW, 1999, 2.01(c)).

As zealous advocates on behalf of their clients, lawyers sometimes—perhaps often—are duty-bound to assert positions with which they personally disagree or represent clients they find repugnant, or whose behavior they find appalling. This is true, for example, when an African American lawyer working in cooperation with the American Civil Liberties Union represents the Ku Klux Klan in asserting that organization's First Amendment rights because the law guarantees the right of citizens to express their political opinions and the particular lawyer believes strongly in this principle (e.g., Verhovek, 1993). This may also be true when a lawyer defends a parent alleged to have physically or sexually abused his or her child. Harvard Law School Professor Allen Dershowitz has explained that, "An effective lawyer must do everything on behalf of his client that is not forbidden by the law or the rules of the legal profession. But a good person should always be uncomfortable about doing anything that does not meet his or her personal standards of morality" (Dershowitz, 2001, p. 159). Once the lawyer has accepted the responsibility of representing a client, that lawyer's duty is clear: she must seek to achieve that client's legitimate goals regardless of the lawyer's personal opinion of the client or agreement with the goal. As Professor Dershowitz points out, one's ethical responsibilities as a lawyer may conflict with one's personal values, but a lawyer cannot disregard her professional responsibilities because they may conflict with her personal sense of right and wrong. Many lawyers struggle with this conflict throughout their careers (Dershowitz, 2001).

5.8. Duty of loyalty

Child welfare practice is rife with potential conflicts of interest. Weil (1982) has observed that "social workers [practicing in child welfare] may be involved with conflicting or potentially conflicting interests of several family members." (p. 394) A social worker assigned to work on a child welfare case is charged with two potentially conflicting obligations: to protect the child from maltreatment while maintaining the integrity of the family unit whenever possible (Weil, 1982). The Child Abuse Prevention and Treatment Act (P.L. 93-247, 1988) establishes this elemental conflict in our nation's policy. Child welfare workers are expected to protect the well-being of children without unnecessarily separating children from their parents. Similarly, social workers must seek to reunify children with their parents when the crisis has passed, the parent has taken steps to address the reasons the state became involved in the family's life and the worker believes placement in parental custody would no longer be "contrary to the child's welfare" (Adoption Assistance and Child Welfare Act, P.L. 96-272, 1980). While the federal law requires that child welfare workers consider the safety of the child as their paramount consideration, the child welfare caseworker necessarily must balance the interests of the child, the parents and the state when undertaking case related decision-making.

In 1982, Professor Weil published a study of social workers' and lawyers' perceptions of each other. In that paper she noted that "Social workers gave lowest ratings to lawyers on concern for others. . ." (p.399). She suggested that this result "may be related to each profession's parochial view that their own service exhibits more concern for client welfare" (p. 399). The social workers who participated in Weil's survey were perceptive. When representing a client, a lawyer's duties to avoid conflicts of interest and to loyally advocate solely for her client should convey the perception that her primary—indeed only—interest is achieving the goal the client has established for the representation. Rather than a sense of their own profession as more empathic, those social workers were likely reporting on the practical realities of the lawyers' ethical duty of loyalty only to the client.

The NASW Code of Ethics defines "Clients" in a way that is very foreign to lawyers. It provides: "'Clients' is used inclusively to refer to individuals, families, groups, organizations, and communities" (NASW, 1999, Preamble). Consistent with this definition of "client," when asked, many child welfare caseworkers define their client as "the family," despite the fact that "the family" may contain individual members with obviously conflicting interests—the child, with his or her interest in safety, and the parents, with their interest in being let alone by the State's agent.

Lawyers, on the other hand, are very clear that they have only one client. The Model Rules demand that a lawyer avoid conflicts of interest (ABA, 2007). Model Rule 1.7 establishes this basic prohibition:

a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

From the perspective of the legal advocate, where a parent is accused of having maltreated a child, there is necessarily a conflict of interest between that parent and that child. In addition to the Model Rules, the Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases admonish the attorney to avoid even potential conflicts of interest, and provide that a single lawyer generally should not represent both parents in a child protective proceeding (ABA, 2006, 14). The action step for Standard 14 provides that

The parent's attorney must not represent both parents if their interests differ. The attorney should generally avoid representing both parents when there is even a potential for conflicts of interests. In situations involving allegations of domestic violence the attorney should never represent both parents.

The commentary to the rule observes that "Even in cases in which there is no apparent conflict at the beginning of the case, conflicts may arise as the case proceeds."

A lawyer's ethical responsibility to her client requires the lawyer to aggressively seek to achieve the client's articulated goal. The Model Rules provide that "a lawyer shall abide by a client's decisions concerning the objectives of representation and...shall consult with the client as to the means by which they are to be pursued" (ABA, 2007, Model Rule 1.2). The lawyer must pursue the client's goals without regard to the ramification of her advocacy on another party in the case, the law generally or society at large. In the child welfare context, for instance, a lawyer representing a parent accused of child abuse must seek the child's return to parental custody if that is the client-parent's articulated goal. The lawyer must do so even if the lawyer is concerned that the client is unstable or that abuse has occurred in the past and may recur.

This is not to suggest that the lawyer will or should ignore her concerns. As the Preamble to the Model Rules states, a lawyer performs differing functions on behalf of a client. She may, at different times, serve her client as an advisor, an advocate, a negotiator or an evaluator of the client's legal position (ABA, 2007, Preamble [2]). At the same time the lawyer is pressing the caseworker to return the child to the parent-client's custody through negotiation—either directly with the caseworker or with the caseworker's counsel—and asserting this position as an advocate in the courtroom, she may be advising the client to cooperate with the services offered by the child welfare agency and to pursue additional services that might alleviate the lawyer's concerns about the client's potential to harm the child. In each of these activities the lawyer is loyally seeking to achieve the client's stated goal of return of the child to the parent's custody.

Compare the clarity of the lawyer's ethical position to that of the ethical child welfare worker's practice. The NASW Code of Ethics, Ethical Standard 1.01 provides: "Social workers' primary responsibility is to promote the well-being of clients. In general, clients' interests are primary. However, social workers' responsibility to the larger society or specific legal obligations may on limited occasions supersede the loyalty owed clients..." (NASW, 1999, 1.01). While the child welfare worker must consider the interests of the broader community, unless the client would use the lawyer to commit a crime, the lawyer is prohibited from taking these larger issues into consideration when representing a client. Indeed, the lawyer would not presume to know with any degree of certainty the interests of the broader community.

5.9. *Communication with adverse parties*

The Model Rules provide that "a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order" (ABA, 2007 Model Rule 4.2). Thus, say, if a child's attorney wishes to speak with the caseworker and the caseworker is represented by the state's attorney, the Model Rules require that the child's lawyer obtain the permission of the state's attorney before speaking directly with the caseworker about the case.

Significantly, however, the Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases recommend that the parent's attorney communicate regularly with the caseworker (ABA, 2006, 6). Some states' legal ethics committees may have issued opinions that permit a lawyer in a child welfare case to communicate directly with a child welfare worker. Michigan is one such state. In 1999, the State Bar of Michigan issued Ethics Opinion RI-316, which makes clear that a child's attorney in a child protective proceeding may discuss the case with the assigned child welfare worker without the worker's lawyer's presence (State Bar of Michigan, 1999). Thus, lawyers may be working with unclear understandings of their ethical responsibilities in a given circumstance, and this may become an issue that inhibits communication.

When the law permits the lawyer for another party to talk directly with the child welfare worker, the lawyer is under additional duties imposed by the Model Rules. In such a situation, the lawyer should treat the caseworker as an unrepresented party. Model Rule 4.3 addresses the lawyer's ethical duties when communicating with an unrepresented person (ABA, 2007). In essence, when dealing with an unrepresented child welfare worker, a lawyer should neither state nor imply that the lawyer is disinterested in the case. If the caseworker misunderstands the lawyer's role, the lawyer is required to correct that misunderstanding. Finally, the lawyer must not give the caseworker in this circumstance legal advice beyond suggesting that the worker discuss the matter with his attorney.

While two clients—e.g., a parent and a social worker—may communicate directly, “a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make” (ABA, 2007, Comment to Model Rule 4.2[4]). Thus, a parent or child's attorney may counsel the client to withhold certain damaging information from the social worker. It is almost a certainty that the lawyer will advise the client to refrain from signing any documents without first permitting the lawyer to review those documents with the client. To do otherwise would be poor practice on the attorney's part. Thus, in jurisdictions where a parent is asked to sign service agreements, they may refuse to do so until such time as they have had the opportunity to review the document with their attorney.

5.10. *The status of social workers in the legal process*

“[W]e have no respect in court. And that was the one thing that made me leave foster care. As a foster care worker, you had no respect in court.” Former Foster Care Worker.

While not strictly speaking an ethical issue, perceived status differences between lawyers and court personnel, on the one hand, and child welfare caseworkers, on the other, are a source of tension for child welfare workers in their interactions with the legal system. In their analysis of turnover of child welfare professionals in Milwaukee County, Flower et al. (2005) found that the perceived lack of status was a theme among focus groups they conducted. This lack of “professional regard” came both from juvenile court authorities and from the lawyers of the District Attorney's Office who represented the child welfare workers. This lack of regard for the child welfare workers' professionalism was graphically illustrated by court personnel's referring to them as “lay people” (p. 6).

Our findings regarding interdisciplinary status issues were similar. A theme emerged from our focus groups that made clear that child welfare workers feel undervalued by the legal professionals with whom they must routinely interact in order to carry out their responsibilities. As one suburban casework supervisor explained:

We send workers in representing, in theory, the State of Michigan, which in the setting of the courtroom...is supposed to be the most influential party other than obviously the parents. We are supposedly representing the State government bringing the matter to the attention of the court regarding actions that are supposed to be taken on behalf of the children. As a practical matter in the courtroom, because they are neither lawyers themselves nor represented by lawyers for the most part, they probably have the lowest status in the courtroom.

The authors of the Milwaukee County study noted that meetings between child welfare agency staff and juvenile court personnel lessened this tension (Flower et al., 2005).

6. Need for training

In addition to the focus groups that formed the foundation for this article, the University of Michigan Recruitment and Retention program is conducting a longitudinal study of new child welfare workers. Most of these workers are new

hires, while some are transfers from within the agency, and some are employed by private agencies. While a detailed discussion of this study is beyond the scope of this paper, it is worth noting that preliminary results suggest that when surveyed at six, twelve and eighteen months new child welfare workers recognize their lack of training to deal with the legal demands of their jobs. They consistently endorse legal training as the type of training they need most. For example, at six months 59.1% of 171 respondents endorsed the need for additional training regarding legal matters. At 12 months, too, legal training was the most frequently requested skills training these research subjects identified, with 35% of respondents endorsing the need for additional legal training. Even when not specifically asked about the need for legal training 18 months after taking a job with the agency, 50% of child welfare workers spontaneously identified their need for more legal training, although it must be noted that only a small number replied at that time ($n=10$).

It is clear from the information gleaned through our focus groups, from a review of the professional literature and from the preliminary results from our longitudinal study that there is a critical need for child welfare workers to receive more training regarding legal issues. As part of our work on the recruitment and retention training project, we have developed a day-long, case-based, practical legal training program. In addition to information about the substantive law and the responsibilities of child welfare workers, that training contains a component that addresses legal ethics.

That legal component uses a case example to highlight when and how issues of conflicting professional ethics may arise in child welfare practice. The training is designed to be delivered to an audience of 35–50 participants with approximately 15% of the participants being lawyers and 85% child welfare workers. The participants are arranged at tables in small groups of about 8 per table, each table having at least one lawyer. The participants are provided a fact pattern then given several questions to address in their small group. The participants read the fact pattern then have time to discuss the issues raised by the facts of the case at their table in their small group. The fact pattern is designed to elicit from both social work participants and lawyer participants their views regarding their ethical duties, and a great deal of learning takes place in these small group discussions. After the small groups have had the chance to address the questions, the entire audience is reconvened as a large group and each small group is asked to report on what they discussed and how they answered each question. This training is designed to be facilitated by one social work professional and one legal professional.

This type of hands-on multidisciplinary training is critical if child welfare workers are to develop an understanding of legal ethics and develop greater understanding of the legal process and how to work with lawyers.

7. Conclusion

Child welfare workers are not well informed about legal ethics and how lawyers' ethical concerns impact their day-to-day work as they endeavor to protect abused and neglected children. This paper reports the results of a series of focus groups conducted as part of a federally funded recruitment and retention training grant, which identified child welfare workers' frustration in their encounters with lawyers and courts as a factor contributing to child welfare worker burnout and potential turnover. By better understanding legal ethics and being able to put lawyers' behavior into context, child welfare workers may be more prepared to meet the challenges of the court related aspects of their job. Being better prepared in this way may reduce the stress caused by workers' interactions with lawyers and the court system, and may positively impact child welfare worker turnover.

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