

Ethical Advocacy in Juvenile Court

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Family Team Meetings

- **1) How do you advise your client to participate Pre-Adjudication?**
- **Pre Adjudication client is going to talk to others about their case.*
- Reasonably consult with client about client's objectives and means to accomplish.
 - Rule 3-501.4 (a) (2)
- Counsel shall explain a matter to the extent "reasonably necessary" for client to make informed decisions.
 - Rule 3-501.4 (b)
 - "Reasonably necessary" is a subjective term
 - Both in terms of the client's ability to understand and the nature of the litigation

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- ** What can you say in conversations with other counsel, professionals, or during FTM:*
- Counsel shall not reveal information relating to representation of client unless client has given informed consent. **Rule 3-501.6**
- "Informed consent" is an agreement about the course of conduct after the lawyer has given all information and explained the risks and reasonable alternatives. **Rule 3-501.0 (e)**

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- **BUT**- a lawyer is impliedly authorized to make disclosures about client that are appropriate to carrying out representation. **3-501.6 [note 5]**
- **AND**- a lawyer can make disclosures when trying to discern the ethics of a situation and seeking legal advice on said situation. **3-501.6 [note 7]**
- **2) Post Adjudication disclosures different?**
(Allegations have been found true and additional circumstances and facts have been established.)

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- **Communication with others who are represented*
- In representing a client, a lawyer cannot communicate with any other party who has counsel without other counsel's consent.
– **Rule 3-504.2**
- Applies to communications with persons who are represented by counsel for issues related to the matter lawyer is providing representation. **Rule 3-504.2 [note 2]**

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- Rule applies even if the represented person initiates the communication.
– **Rule 3-504.2 [note 3]**
- **BUT**- does not apply to subjects beyond the scope of the lawyer's representation.
– **Rule 3-504.2 [note 4]**

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- **3) For a GAL for a child, how do you deal with an unrepresented parent?**
- When dealing with an unrepresented parent (or anyone else who is not represented by counsel), a lawyer must not convey in any manner that he or she is "disinterested."
 - **Rule 3-504.3**
 - "In the course of representing a client a lawyer shall not knowingly...make a false statement of material fact or law to a third person." **Rule 3-504.1**
 - BUT no duty to inform of "material facts" **Rule 3-504.1 [note 1]**

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- A lawyer representing his client's interests shall not give advice to an unrepresented individual whose interests are adverse to the lawyer's client. **Rule 3-504.3 [note 2]**
 - Duty of loyalty versus appropriate dealing
- A lawyer should always identify their client and their role in the matter when speaking to an unrepresented individual. **Rule 3-504.3[note 1]**

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- If a lawyer believes that her communications with an unrepresented individual is misunderstood, the lawyer has a duty to make "reasonable efforts" to correct any misunderstanding. **Rule 3-504.3**
 - The Rules address those unrepresented individuals who have minimal or no prior experience with legal matters. Whether an unrepresented individual understands is not an objective test, but based subjectively on that party's background and mentality.

Confidentiality

- 1) "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted." **Rule 3-501.6(a)**
- Exceptions:
 - 1) To prevent a crime or "reasonably certain" it will prevent substantial harm/death to the client
 - 2) Inquire about ethics of a situation
 - 3) Defend oneself against accusations of the client
 - 4) Comply with court orders ***Rule 3-501.6 (b)**

Confidentiality

- **1) Can the client/child give informed consent for disclosure of information?**
- Examples: evaluations, therapy reports, discovery from mental health professionals
- Right to Privacy?
- Nothing in the rules indicate when a child can effectively give "informed consent."

Confidentiality

- BUT in **SC v. Guardian ad Litem, 845 So. 2nd 953 (Flo. App. 4; 2003)** provides some authority that minors should be able to give such consent if over 13 years of age and if under that age, the Court examines maturity and capacity to give consent.
- Ultimately the **SC** court decides: "Children with the capacity to consent or withhold that consent to the release of confidential information concerning healthcare treatment should be asked to give informed consent to the release of such information."

Confidentiality

- **2) What if a child is on the run and you know the whereabouts. Disclose information?**
- **Possible safety concern, right?*
- **NO-** Unless the child is committing a crime, or is in a position that it's "reasonably certain" that he/she would die or sustain substantial bodily harm, or he/she gives informed consent, an attorney cannot disclose information on the clients whereabouts. **Rule 3-501.6 (b)**
 - **RLR v. State of Florida et al (No. 3D13-1025; Florida Court of Appeals June 19, 2013)**

Diligence

- **"A lawyer shall act with reasonable diligence and promptness in representing a client."**
 - **Rule 3-501.3**
 - Procrastination- Client's interests can be adversely affected by the passage of time or change in conditions. **Rule 3-501.3 [Note 3]**
 - Custody/Placement
 - This does not preclude a lawyer from agreeing to reasonable continuances

Diligence

- An attorney must control their workload to be able to competently and promptly address each case. **Rule 3-501.3 [Note 2]**
- Once all matters under the scope of representation are resolved, the relationship is terminated.
 - If unclear, best resolved in writing indicating the end of the attorney-client relationship. **Rule 3-501.3 [Note 4]**
 - i.e custody matters

Scope of Representation

- **A lawyer should pursue matters on behalf of a client regardless of opposition, obstruction or inconvenience.**
 - 3-501.3 [Note 1]
- Who decides the course of action?
 - A lawyer shall abide by a client’s decisions concerning the objectives of representation. **Rule 3-501.2(a)**
 - A lawyer is required to reasonably consult with the client about the means by which to accomplish the objectives. **Rule 3-501.4(2)**

Scope of Representation

- If there is a disagreement between the lawyer and client- who wins?
 - Example- Interlocutory appeals
 - The rules state that clients “normally defer” to the lawyer’s knowledge. **Rule 3-501.2 [Note 2]**
 - The lawyer usually defers to the client for matters involving expenses or effects on third parties.
 - The rule specifically states that it does not prescribe how disagreements are to be resolved.

Scope of Representation

- Solutions offered:
 - If there is a “fundamental disagreement” with the client, the lawyer may withdraw.
 - **Rule 3-501.2 [Note 2] and 3-501.16(b)(4)**
 - OR, the client can fire the lawyer.

Best Interests

- **1) Client requests something against interest but in best interest of child**
 - Example: Client wants a child to submit to a forensic interview for abuse but there's some indications in past that client has abused the child.

Best Interests

- Ethical coverage for attorney if the client acts out of interest
 - Though not formally noted in the rules of professional conduct "duty of loyalty" is mentioned half a dozen times in rules as a guiding principle for a lawyer in their representation of a client.
 - A lawyer shall not use information related to the representation of a client to the disadvantage of the client unless the client has given informed consent.
- Rule 3-501.8 (b)**

Diminished Capacity

- **1) When is it appropriate to ask for the appointment of a GAL for a parent?**
- When the client is at risk of substantial physical, financial or other harm unless action is taken.
 - **Rule 3-501.14(b)**
- Otherwise, a lawyer should try to maintain a normal client-lawyer relationship regardless of a diminished capacity due to age or mental impairment.
 - **Rule 3-501.14(a)**
- Age alone not a deciding factor. **Rule 3-501.14 [Note 1]**

Diminished Capacity

2) Drawbacks of Requesting a GAL

- Stigma in the courtroom
- Disclosure of a client's capacity could adversely affect their interests
- Involuntary commitment
- Lawyer only authorized to reveal information reasonable necessary to protect the client's interests
 - Rule 3-501.14(c) and Note 8 ("The lawyer's position in such cases is an unavoidably difficult one.")
