

Everyday Ethics in Legal Aid Practice



Conflicts, Confidentiality, and
Other Issues

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INTRODUCTION



- Background of Ethics in Legal Aid
- What's the difference? Context
- Source of law? B&P Code, CRPC

Agenda

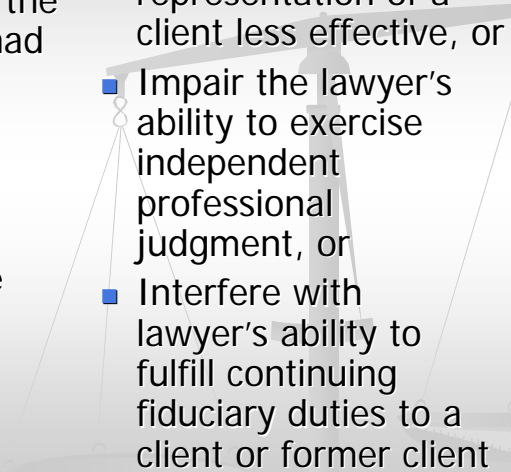
- Ethics v. ethics
- Conflicts of Interest
- Confidentiality
- Other issues in Legal Aid practice

Ethics v. ethics

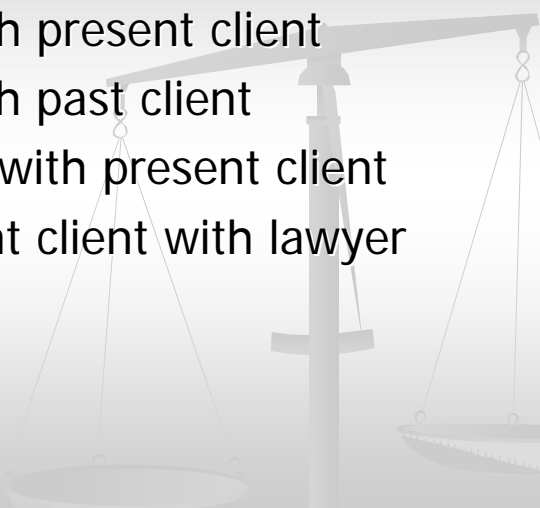
What's the difference?

Why does it matter?

Conflict defined

- The interests of anyone with whom the lawyer has or has had a relationship,
 - or
 - The interests of the lawyer . . .
- Render the lawyer's representation of a client less effective, or
 - Impair the lawyer's ability to exercise independent professional judgment, or
 - Interfere with lawyer's ability to fulfill continuing fiduciary duties to a client or former client
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Types of Conflicts

- New client with present client
 - New client with past client
 - Present client with present client
 - New or present client with lawyer
 - Issue conflict
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Questions to Ask

- Is it a conflict?
- If so, can it be waived?
 - When
 - How

Duties

- There are two issues to consider in analyzing conflicts:
 - Duty of Loyalty
 - Duty of Confidentiality

Examples

- We provided counsel and advice to Wife in a divorce/custody proceeding 3 ½ years ago. Husband now comes to see us regarding a welfare overpayment, which occurred while he was living with Wife. One of the issues is whether she had unreported income. Can we assist him with the welfare case?

Examples

- Three years ago we helped Client 1 get a restraining order against Batterer. In the course of the proceeding she obtained an order for support. Client 2 has now come to see us. She has a restraining order against Batterer, and wants our assistance with a divorce, including custody and support. Can we represent Client 2?

Examples

- When a legal services organization conducts a community legal clinic, and uses volunteer attorneys, what kind of conflict check (if any) needs to be done? Does the answer change for bar association "law days"? What about clinics run by the organization without using volunteer attorneys?

Confidentiality v. Privilege

- **Confidentiality – Ethical concept – Broadly construed**
- **Privilege – Evidence concept Narrowly construed**

What is the law?

- Business and Professions Code Section 6068(e)(1)

“ To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.”

WHAT IS COVERED?

What is covered?

Confidence and secrets.

What's the difference?

WHY

A faint, light gray background image of a pair of scales of justice, symbolizing law and equity.

**Discipline
Malpractice
Essence of Attorney-Client
Relationship**

WHY

A faint, light gray background image of a pair of scales of justice, symbolizing law and equity.

Rule 1-300, Discussion (1)

“Preserving the confidentiality of client information contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct.”

WHO

Applies to everyone connected with the law office:

- Attorneys
- Paralegals
- Staff
- Clerks
- Volunteers

WHO IS A CLIENT?

- Current and former clients
- Applicants for service, whether accepted or not
- Doesn't matter who takes the information or where

WHERE

EVERYWHERE

In the office, at lunch, at home, anywhere else

WHEN

Confidentiality continues forever. Ending the case doesn't end the rule, nor does death of the client.

Examples

- A case worker from a shelter calls to find out about a case. Under what circumstances can we give information to the case worker? What if the client is difficult to get hold of or has language issues? What if the case worker referred the case to LAFLA and wants an update and says she is calling on behalf of the client?

Examples

- I represent Mom in a real estate fraud action. We prevail, and she will be getting a check for a substantial amount. Her daughter is now coming in with Mom and offering to help her. Mom is on SSI and Medi-Cal, and living in a nursing home. Daughter removes Mom from nursing home and takes her to live with daughter. Daughter says she will take care of Mom. I am reluctant to give the money to Mom, as I am afraid Daughter will take it and disappear. Is there anything I can do?

Examples

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- We use an interpreter to communicate with the client. What are the precautions we need to take regarding confidentiality? Is there a difference if we use our law student to interpret and if the client brings her own interpreter?

Examples

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- Attorney worked at legal aid for several years. She has now left and obtained a new job with the U.S. Dept. of Justice. As part of their background check, they have asked for a list of all clients she represented in the past two years. Can this be provided?

Examples

- Client B seeks our assistance in a case. In performing a conflict check, we discover that we are unable to represent B due to a conflict of interest with client A. What can we tell B about the reason we are unable to accept his case?

Client Expectations

- Scope of Representation
- Outcome
- Duration

Other Issues

- Multiple representation
- Language
- Client Obligations

Any Questions?

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