

Ethics for DSS Legal Practice
Parts I & II
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As Attorneys Representing Your DSS clients, you May be Confronted With a Number of Ethical Dilemmas

- Attorney- client relationship with your DSS caseworkers, supervisors or even Commissioner
- Representing an agency that has its own supervisory hierarchy, as opposed to representing a single, individual client
- Ethical responsibilities that your clients have with their own clients- the recipients of DSS services
- Ethical issues concerning opposing counsel or others that impact your cases

Attorneys Also Have a Number of More General Ethical Requirements

- Competence
- Communication with your client
- Zealous advocacy
- Conduct before a tribunal

Sources of Ethical Duties and Guidance

- New York Rules of Professional Conduct
- Ethical Opinions from the NYS Bar Association
- Case Law
- Statutes and Regulations Which Impose Duties Upon Attorneys or Others

New York Rules of Professional Conduct

- Effective April 1, 2009, replacing the New York Code of Professional Responsibility
- The Rules themselves
- Comments to the Rules

New York Rules of Professional Conduct

Preamble

- Roles: includes advisor, advocate, negotiator, and evaluator.
- Obligations: assert the client's position under the rules of the adversary system; maintain the client's confidential information, except in limited circumstances, and to act with loyalty during the representation.
- Authority concerning legal matters: to decide whether to agree to a settlement? to appeal from an adverse judgment?

New York Rules of Professional Conduct

RULE 1.1

COMPETENCE

New York Rules of Professional Conduct

RULE 1.2

SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

New York Rules of Professional Conduct

RULE 1.4

COMMUNICATION

New York Rules of Professional Conduct

RULE 2.1

ADVISOR

New York Rules of Professional Conduct

RULE 3.1

Non-Meritorious Claims and Contentions

22 NYCRR 130-1.1

Costs; sanctions

New York Rules of Professional Conduct

RULE 1.13

ORGANIZATION AS CLIENT

New York Rules of Professional Conduct

RULE 1.14

CLIENT WITH DIMINISHED CAPACITY

New York Rules of Professional Conduct

RULE 3.3

CONDUCT BEFORE A TRIBUNAL

New York Rules of Professional Conduct

RULE 4.3

COMMUNICATING WITH UNREPRESENTED PERSONS

New York Rules of Professional Conduct

RULE 3.7 LAWYER AS WITNESS

New York Rules of Professional Conduct

RULE 8.4 MISCONDUCT

New York Rules of Professional Conduct

Appendix A Standards of Civility

Ethical Issues-

Filing/Settlement of Cases

- Settlement Authority
- Regulatory Guidance?
- Resolving Conflicts

Ethical Issues

Who is the Attorney Representing?

- Ethical Opinions
- Case Law

Ethical Issues

The Client's Ethical Obligations

- NAPSA APS Ethics

Ethical Issues

Duty to Report Misconduct of Municipal Employee

- Ethical Opinion

Ethical Issues

Attorney for the Child(ren)

- Regulatory Requirements
- Case Law
 - Meeting the Child(ren)
 - Substituted Judgement
 - Multiple Children

Ethical Issues

Attorney as Witness

- AFC
- Counsel for Respondent
 - Counsel for AIP

Ethical Issues

Court Evaluator

- Regulations
- Ethical Opinion

Ethical Issues

Interviewing a Represented Person

- Caselaw

Ethical Issues

Judicial Disqualification

Ethical Issues- Attorney Conflicts of Interest

- Service on board of directors
- Acceptance of other legal work by part-time employees
- Acceptance of outside legal work by full-time employee
- Former DSS attorney entering private practice
- Private attorney who enters government practice

Ethical Issues-Miscellaneous

- Nursing home's attorneys serving as guardian for residents of the nursing home.

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Questions?