



Ethics Session on Substance Use Disorders

Supreme Court Task Force on Permanency Planning

April 11, 2023



Wondering If There's A Conflict

You have recently been appointed as a GAL for Kevin, age 8. The case is set for a temporary custody hearing in two days. In preparing for the hearing, you note that Kevin's parents, Jack and Norma, are not getting Kevin to school as required by Kansas law. The paperwork includes no other concerns. You recognize Norma's name from a consultation you had three or four years ago with Norma about filing for divorce. Though she never filed, during the consultation Norma disclosed to you that Jack had been physically abusive to both her and Kevin, and that she struggled with alcoholism and addiction to pain medication. You haven't had contact with Norma since that consultation, but anticipate she will be in court for the temporary custody hearing.

Are you required to withdraw as guardian ad litem?



Poll Questions



Duties to Prospective Clients – Rule 1.18

(a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client.



Duties to Prospective Clients – Rule 1.18

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).



Duties to Prospective Clients – Rule 1.18

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:**(1)** both the affected client and the prospective client have given informed consent, confirmed in writing, or:**(2)** the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and**(i)** the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and**(ii)** written notice is promptly given to the prospective client.



Comments to Rule 1.18

Comment [3] It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing that information, except as permitted by Rule 1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

Comment [6] Even in the absence of an agreement, under paragraph (c), the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter.



Declining or Terminating Representation - Rule 1.16

(a) Except as stated in paragraph (c), a lawyer **shall not** represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the rules of professional conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;



Declining or Terminating Representation - Rule 1.16

(3) the lawyer is discharged; or

(4) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent.



Declining or Terminating Representation - Rule 1.16

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(1) the client has used the lawyer's services to perpetrate a crime or fraud;

(2) a client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;



Declining or Terminating Representation - Rule 1.16

(3) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(4) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(5) other good cause for withdrawal exists.



Missouri Rules!!

Mary & Jane



Missouri Rules!! Mary & Jane

Mary is a single mom raising her 14-year-old daughter Jane. Jane had been taken into DCF custody and was adjudicated as a child in need of care. Disposition was set for reintegration with Mary. Jane had come into the system because her father had sexually trafficked Jane since she was 12. The father is currently doing time in prison.



Missouri Rules!! Mary & Jane

Mary has completed all task asked of her and parties were given notice of pending reunification.

Mary lives in Miami, County Kansas, which borders the State of Missouri, and Mary recently got a part time job at a marijuana dispensary in Missouri.



Missouri Rules!! Mary & Jane

Mary was drug screened prior to reintegration and tested positive for THC. Mary contacted her attorney and told them that she had in fact ate an edible that she had brought home from the dispensary. Mary then told her attorney that she didn't bring the edible home, but took it while working at the dispensary in Missouri. Mary further asked the attorney to tell the parties that the marijuana was used and taken in Missouri.



Missouri Rules!! Mary & Jane

A drug screen was completed on Jane, at which time she tested negative. Jane wants to return home, and told her case worker that her mom has never used drugs in front of her, but she thought her mom kept some edibles at home. The GAL contacted Jane and received the same information.



Missouri Rules!! Mary & Jane

Does the positive drug screen for THC cause any concerns for reintegration?

What should or should not Mary's attorney tell the Court or other parties?

What should or should not the GAL tell the Court or other parties?



Missouri Rules!! Mary & Jane

Does it matter since Missouri has legalized recreational marijuana?

Does it matter or should Mary be allowed to keep her part time job to support the family?



Poll Questions



Norm & Jalen



Norm & Jalen

Norm has been serving as guardian ad litem for Jalen for the last year while Jalen's parents have been working their re-integration plan. St. Francis Ministries found a relative placement for Jalen with his Aunt Cindy and his cousin DeJuan. While living with his aunt, Jalen was able to play on the local high school basketball team. Just before the team qualified for the state tournament, aunt Cindy called St. Francis and demanded Jalen be moved immediately due to ongoing fights between Jalen and DeJuan which required law enforcement to be called to the house.



Norm & Jalen

St. Francis has located a new foster home for Jalen. However, it is 100 miles away and Jalen will not be able to continue at his high school and will miss the state tournament. Norm can hardly stand to see this happen to Jalen.



Norm & Jalen

At the end of a hearing in an unrelated case, Norm asks to visit with the judge in chambers. Judge Bill agrees. When the door to chambers is closed, Norm asks the judge about the possibility of placing Jalen with Norm as an emergency placement so Jalen can play in the state tournament.



Norm & Jalen

What should Judge Bill do?

Should Norm call the Disciplinary Office?