ETHICS IN ADVOCACY: BEST PRACTICES IN CHALLENGING CASES

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WHETHER FROM WAR OR A DIFFICULT LIFE...

PTSD CAN BE DEBILITATING
This is where Title 22 intersects with the Maine Rules of Professional Conduct (MRPC).

Everyone knows these are challenging cases.

As an advocate you've got a job to do.

Doesn't matter if your client is volatile or overly passive.
As a practitioner, you have to communicate in a manner which the client (hopefully) can understand and participate. You want clients to trust your advice and work with you to achieve their goals. See MRPC 1.1; 1.2; 1.4; 2.1; 1.14.

WHAT ARE YOUR DUTIES?

For parents, GALs and DHHS, the common goal (generally) is reunification. Be diligent in this regard (MRPC 1.3). Family Service Plans.

COMMON GOALS

In developing the rehabilitation and reunification plan, the department shall make good faith efforts to seek the participation of the parent.”

22 M.R.S.A. §4041(1-A)(A)(1)(a). “[The Department shall] Make good faith efforts to cooperate with the parent in pursuit of the plan.”

REUNIFICATION: DEPARTMENT RESPONSIBILITIES
REUNIFICATION: PARENT RESPONSIBILITIES

BY THE PARENTS

[The responsibilities of the parent include, as appropriate to the child and family, that the parent:]

"Cooperate with the department in the development of the plan, as described in paragraph A"

22 M.R.S.A. §4041(1)-X(B)(1)

Make good faith efforts to cooperate with the Department in developing and pursuing the plan.

Counsel: How do you balance being a strong legal advocate for your client, and an effective collaborator with DHHS in developing and pursuing a plan of family reunification?

GALs: How do you balance being a strong advocate for a child’s best interest, and an effective collaborator with the family and DHHS in developing and pursuing a plan of family reunification?

CHALLENGES

Don’t get discouraged by the lack of cooperation/collaboration between you, your client, and the other involved parties.

You can’t always be successful on your client’s behalf...but do keep trying

See MRPC 1.3 (diligence)

SOMETIMES, IT’S JUST YOUR (UN)LUCKY DAY
Make sure you know what you’re doing!
See MRPC 1.1 (competence)

AND….

GOOD TO KNOW!

MRPC 1.14 “Client w Diminished Capacity”
1.14(a) Says Act Normal...
...the lawyer shall, “as far as reasonably possible, maintain a normal client-lawyer relationship....”

1.14(b) Except when you can’t...
Lawyer may take reasonably necessary protective action, including ... seeking the appointment of a guardian....
But only if the "lawyer reasonably believes that
- the client has diminished capacity,
- is at risk of substantial physical, financial or other harm
unless action is taken and
- the client cannot adequately act in the client’s own interest.

YES, THIS WORK CAN BE FRUSTRATING
TAKE CARE OF YOURSELF TOO

AND DON’T BE AFRAID TO ASK FOR HELP

- Maine Assistance Program, Bill Nugent
- 207 266-5951; OR
- A trusted colleague who will be objective; OR

ETHICS HELPLINE

- Monday – Wednesday – Friday
- 207-623-1121