

Chapter 6

Ethical Practice in Forensic Social Work

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INTRODUCTION

The growing cultural diversity among social work clients and their families has been documented by Professor Elaine P. Congress and Professor Winnie W. Kung (2005). Based on the U.S. Census report of 2000, Congress and Kung estimate "... that by the year 2050 almost half (49.9%) of the population will be non-Caucasian. In large metropolitan areas such as New York City the majority of the population now already come from various countries in Asia, South and Central America, and the Caribbean, and as much as 36% of its residents are foreign born ... In the most recent Code of Ethics social workers are advised to understand and respect cultural differences among clients and to demonstrate competence in working with people from different cultures" (Congress & Kung, 2005, p. 3). The new immigrants are usually poor, vulnerable, oppressed, and victimized by urban crime. As will be discussed in the case illustrations in this chapter, ethical issues of confidentiality, legal and fiduciary responsibilities, boundaries, and self-determination are even more challenging to culturally diverse families.

Social work and law as professions are based upon ethical standards delineated in their respective codes of ethics. Social workers frequently work collaboratively with lawyers and social work ethics and the law usually coincide. However, at times law and ethics collide rather than coincide, with consequences for both professions. Social workers who work in forensic settings have an ethical duty to be responsive to the ethical principles of the social work

profession. This chapter will first explore the role of ethics in the professions in general and then more specifically the role of ethics and law in social work practice. Similarities and differences between law and social work ethics, as well as social workers and lawyers will be addressed. The ETHIC model (Congress, 1999 and 2002) can help in understanding and resolving ethical and legal conflicts. The chapter will conclude with guidelines to help social work practitioners and educators navigate when standards are in conflict in forensic social work practice.

The chapter will focus on ethical practice in forensic social work. Forensic social work has been defined as "the application of social work to questions and issues relating to law and legal systems. This specialty of our profession goes far beyond clinics and psychiatric hospitals for criminal defendants being evaluated and treated on issues of competency and responsibility. A broader definition includes social work practice which in any way is related to legal issues and litigation, both criminal and civil. Child custody issues, involving separation, divorce, neglect, termination of parental rights, the implications of child and spouse abuse, juvenile and adult justice services, corrections, and mandated treatment all fall under this definition" (www.nofsw.org).

LITERATURE REVIEW

Forensic social work has been understudied and even the term underused (Roberts & Brownell, 1999), although the importance of integrating legal

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issues into social work education has been noted (Kopels & Gustavsson, 1996). A review of recent social work literature indicated only six articles that focused on challenges in social worker and lawyer collaboration (Forgey & Colarrosi, 2003; Maidenbergl & Golick, 2001; Pierce, Gleason, & Milller, 2001; Bassuk & Lessem, 2001; Green, Glenwick, & Schiano, 1999; Johnson & Cahn, 1995). Yet ethical conflicts for the social worker in a legal setting frequently arise, especially in the area of child abuse (Forgey & Colarrosi, 2003; Greene, Glenwick, & Schiaffino, 1999). While several earlier articles (Russell, 1988; van Wormer, 1992) focused on role conflict between social workers and lawyers, none relate to the ethical practice of social workers in forensic social work settings, the primary focus of this chapter.

CODES OF ETHICS

Since the time of Hippocrates, ethics have played a role in guiding professional practice. Among early codes of ethics were those adopted by physicians and attorneys. More recently among the helping professions, codes of ethics have been adopted by psychologists, psychiatrists, marriage and family therapists, counselors, and social workers (Dickson & Congress, 2000). Codes of ethics exist to guide professionals in resolving ethical dilemmas, provide protection to the public from unscrupulous practitioners, ensure self-regulation rather than government regulation, offer consistent standards for professional behavior, and protect professionals from litigation (Congress, 1999).

Codes of ethics combine broad aspirations with specific rules of conduct. The NASW Code of Ethics statement that "Social workers should promote the general welfare of society from local to global levels, and the development of people, their communities, and their environments . . ." (NASW Standard 6.01) is an example of the former, while the mandate "Social workers should under no circumstances engage in sexual activities or sexual contact with current clients, whether such contact is consensual or forced (NASW Standard 1.09) is an example of the latter. While a social worker's failure to promote the general welfare of society on a global level is probably a violation of the Code which will not be subject to sanctions, sexual contact with a current client is more likely a violation that will result in sanctions. Such violations are

enforced by professional associations, and penalties range from admonishment to suspension of practice to expulsion from the profession. There may be legal ramifications for ethical violations as well, including proceedings in criminal courts, civil actions for malpractice, or damages resulting from specific harms.

HISTORY OF NASW CODE OF ETHICS

Although the social work profession has been value based since it began over a hundred years ago, the first professional Code of Ethics was not developed until 1920, by Mary Richmond. A chapter of the American Association of Social Work (the organization that preceded NASW) in Toledo, Ohio, is credited with developing the first organizational Code of Ethics (Lowenberg, Dolgoff, & Harrington, 2000).

Five years after the 1955 formation of the National Association of Social Workers as the primary professional organization for social workers, a Code for the National Association of Social Workers was developed. This 1960 NASW Code of Ethics was one page in length and consisted of fourteen abstract and idealistic statements that described social workers' responsibility to the profession. The Code was revised in 1967, 1979, 1990, 1993, and 1996 and amended in 1999.

The current Code was approved by the National Association of Social Workers Delegate Assembly in 1996 after much study and input from social workers around the country. In sharp contrast to earlier codes, this Code had 28 pages and 156 provisions. While a criticism of the former Codes had been that the Code applied primarily to individual practitioners, the new code included a focus on social work practice with groups and families, as well as the ethical responsibilities of supervisors, administrators, educators, trainers, and researchers. Timely topics of concern to social workers included limits to confidentiality, technology, sexual harassment, managed care, cultural competency, and dual relationships — especially of a sexual nature. Of particular relevance to this discussion of law and ethics was the new section on interdisciplinary collaboration and the increased focus on exceptions to confidentiality in the 1999 revision.

The NASW Code of Ethics offers general principles by which to guide ethical behavior, yet by definition

all situations cannot be included (Reamer, 1998). The Code is not “meant to provide a set of rules that prescribe how social workers should act in all situations” and states that applications of the Code must always consider the context in which practice occurs (NASW, 1999, pp. 2–3). In contrast to other countries, however, the NASW Code of Ethics is much more detailed and specific (Congress & Kim, 2005; Congress & McAuliffe, in press).

Similarities and Differences between Law and Ethics, Lawyers and Social Workers

While both laws and professional ethics often have similar goals and underlying value perspectives, laws are seen as more enforceable. In contrast, ethical codes vary among professions and are primarily enforceable among each profession’s members.

Social workers and lawyers are professionals and maintain a fiduciary responsibility toward their clients. It is most important given the greater knowledge of the professional and the vulnerability of the client that both professionals behave in a trustworthy manner toward their clients. Despite both professions having similar fiduciary responsibility to their clients, there are significant differences in role and function that may be challenging for social workers and lawyers in interdisciplinary settings.

Social workers in the child welfare field frequently work collaboratively with lawyers. Public and private agencies may retain attorneys to represent the agency in hearings involving termination of parental rights. Furthermore, the child, birth parents, and adoptive parents are represented by attorneys in court proceedings. Social workers usually conduct psychosocial studies and make recommendations to the attorneys about what would be in the best interests of the child.

In an early article (Stein, 1991), four areas were identified as particularly challenging in interdisciplinary work with lawyers: (1) Definition of client, (2) task delineations, (3) differences in terms of recording, and (4) confidentiality responsibilities.

The greatest conflict between social worker and attorney often emerges in defining who is the client. The ethical issue for the lawyer appears clearer. The lawyer can only represent one party, either the birth parent, the foster care agency, the child, or the adoptive agency. In court proceedings, this leads lawyers

to assume an adversarial role in only presenting evidence which would be helpful to the party they are representing and suppressing evidence that would be detrimental. Social workers, however, adopt more of a mediation role, that is trying to reconcile conflicting positions. While the NASW Code of Ethics states that social workers should promote the best interests of their clients, the definition of client is not defined. In a child welfare agency, a social worker may find herself trying to balance the conflicting demands of an agency advocating for the return of children to their birth parents, a birth mother who seems uncertain about resuming care of her children, and a child who wants to continue to remain with his foster parents. Yet often social workers question who is the client. In the child welfare field is the client – the birth parent, the foster parent, the adoptive parent, or the child? For lawyers, defining who the client might be is much easier. A lawyer would be assigned to represent the interests of one party, either the birth parent, the child, or the foster care agency.

This example illustrates some of the differences in how social workers and lawyers define their roles:

Mrs. Brown had been arrested for selling drugs, but the charges were finally dropped because of insufficient evidence. Jill, a social worker in a child welfare agency, was assigned to make a psychosocial assessment of this family. When she contacted the school the Brown children attended, she learned that the children were often sent to school dirty and without breakfast. Would placement of the children, however, support the dignity and worth of the mother? Since an important role for Mrs. Brown might be that of parent, what would be the effect of placing her children?

Social workers struggle with the social work value of promoting autonomy and self-determination. Should the social worker promote the mother’s self-determination? What if the children, as many children do, want to exercise their self determination by staying with their parent? The new Code states that “social workers’ responsibility to promote self-determination is limited when in their professional judgment a client’s actions or potential actions pose a serious, foreseeable and imminent threat to themselves or others” (NASW, 1999, p. 7). This provision may lead to ethical dilemmas for the child welfare practitioner. Are the children at risk? Is the mother

taking or selling drugs? Are the dirty clothes and no breakfast the result of oversleeping one day or symptomatic of a more serious problem?

A lawyer assigned this client would define his/her role as advocating for the client's legal rights to continue as parent. Promoting the legal rights and interests of the client would be paramount and there would be less attention to looking at the total family situation. In contrast, as guided by social work education, the social worker would approach this situation looking at the total situation, the needs and strengths of all family members without focusing on the legal rights of one individual person in this family.

Task delineation is the second challenging area in interdisciplinary work with social workers and lawyers. There may be disagreement between charges in a petition and future recommendations. Problems may emerge when each profession strays from its area of competence. For example, a classic publication in the child welfare field notes that judges and lawyers may make psychosocial assessments and social workers may assume the lawyer's role by withholding evidence for fear that it will be misconstrued (Goldstein, Freud, Solnit, & Goldstein, 1986). Clear understanding of role differences is essential for ethical social workers in the child welfare field. Social workers may rely primarily on inferential recording, i.e., as in the example, Mrs. R. was not motivated to follow a case plan (Stein, 1991), while attorneys, on the other hand, want specific descriptive facts such as what did the parent do or not do. Lawyers and social workers sometimes do not confer about the case until immediately before the court date. Sometimes it is impossible for the social worker to reconstruct specific facts that leads to conflict between the lawyers and social workers with the latter feeling inadequate. This points to the need for social workers who are involved in child welfare cases to be especially cognizant of maintaining good factual records to improve their communication with attorneys before court appearances. Also it should be noted that a good inferential assessment should be based on facts. For example, the social worker should not report that a client is unmotivated unless there are specific facts that can be used to substantiate this.

Finally, differences in confidentiality responsibilities often produce conflicts between attorneys and social workers. In all 50 states, social workers are mandated child abuse reporters while attorneys are

not. This often produces ethical challenges for the social worker especially when the social worker works for a legal agency, as this example suggests:

Susan, a social worker with Legal Aid who was representing the birth mother in a pending termination of parental rights hearing for Tony, interviewed the mother prior to the hearing. She noted that when eight-year-old Tony's birth mother came to the agency with another child who was still in her care, this five-year-old child, Ben, had bruises on his arms which the mother attributed to falling off his bike. Susan wanted to report this suspected abuse to the child abuse central registry but was told by the attorney not to as this report might be damaging for the impending court case. Susan was very concerned because she knew she was a mandated child abuse reporter and she wanted to promote the best interests of her many clients, including Tony and Ben, while the lawyer only seemed to be concerned about Mrs. Smith's legal interests.

Within the legal agency, Susan can talk with the attorneys to increase their understanding of a familial approach to child welfare. If Ben is abused, Tony may also become abused, which ultimately may have negative consequences for the lawyer's primary client. Before accepting employment in a legal agency, it is important for the social worker to learn about the policies of the agency in situations regarding child abuse. Then the social worker can make an informed decision about whether she wants to work at an agency where legal ethics seem to override social work ethics.

Ethical Dilemmas in Social Work Practice

Social workers in forensic social work are faced with making decisions which may have significant consequences for their client's lives and well-being, ranging from allocation of resources and access to programs to removals of children from their homes; recommendations of probation or parole revocation; and counseling clients around such weighty issues as abortion, divorce, and the termination of life. At the same time, these activities have important ramifications for the social worker, exposing the worker to potential legal actions and liability.

Not uncommonly, the social worker in choosing a course of action is faced with choices between two

or more competing ethical principles, such as client self-determination and client protection, or maintaining client confidentiality and a need to disclose certain information, where guidance from ethics and values is confusing or conflicting. In resolving difficult ethical dilemmas, the social worker must be cognizant of both social work ethics and laws that are applicable to the situation.

Under most circumstances, legal standards and social work ethics coincide. However, at times they do not. The NASW Code of Ethics notes that, "Instances may arise when social workers' ethical obligations conflict with agency policies or relevant laws or regulations. When such conflicts occur, social workers must make a responsible effort to resolve the conflict in a manner that is consistent with the values, principles, and standards expressed in this Code. If a reasonable resolution of the conflict does not appear possible, social workers should seek proper consultation before making a decision" (NASW, 1999, p. 3). Social workers have been advised to attempt to advise these conflicts "through consultation, mediation, lobbying, and other forms of social action" (Reamer, 2002, p. 66).

It is interesting to note how the 1996 Code was revised in 1999. In the most recent revision, section 1.07(c) that speaks to maintaining confidentiality unless disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client, omitted the phrase, "when laws or regulations require disclosure without a client's consent." This change came about because of the profession's ethical concern about unethical laws that undermine our social justice value system, as for example laws limiting the rights of gay people or undocumented immigrants. The current provision in the Code suggests that it is not ethical to violate confidentiality in order to follow a law or regulation that would undermine the rights of a specific population.

Social work has a long tradition of promoting social justice and engaging in civil disobedience to promote the rights of vulnerable populations. One illustration is social workers' participation in the civil rights demonstrations of the 1960s. The Code of Ethics should protect social workers who engage in this behavior, not label their behavior as unethical.

The American Psychiatric Association acknowledges this problem in their Principles of Medical Ethics:

It would seem self-evident that a psychiatrist who is a law- breaker might be ethically unsuited to practice his/her profession. When such illegal activities bear directly upon his/her practice, this would obviously be the case. However, in other instances, illegal activities such as those concerning the right to protest social injustices might not bear on either the image of the psychiatrist or the ability of the specific psychiatrist to treat his/her patient ethically and well. While no committee or board could offer prior assurances that any illegal activity would not be considered unethical, it is conceivable that an individual could violate a law without being guilty of professionally unethical behavior. (American Psychiatric Association, 1992, Section 3.1)

Law and Ethics in Social Work: A Paradigm

It is useful in this analysis to consider law and ethics as independent entities, with different sources and different enforcement mechanisms, although the two often overlap. A paradigm about the relationship of law and ethics considers four possible combinations: professional conduct which is both ethical and legal; conduct both unethical and illegal; conduct which is unethical yet legal; and finally, professional conduct which is ethical yet illegal (Dickson & Congress, 2000) These four possibilities are depicted in Table 6-1.

In the first cell, professional conduct that is both legal and ethical, which is found most often, is considered acceptable social work practice, and presents few problems. Two examples are as follows: Social workers may legally and ethically disclose confidential information based on the client's valid informed consent (NASW standard 1.07(b)) and social workers should legally and ethically provide services based on an informed consent, and where the client

Table 6-1

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|---|--|
| Cell I Conduct which is: Ethical and Legal | Cell II Conduct which is: Unethical and yet Legal |
| Cell III Conduct which is: Ethical and yet Illegal | Cell IV Conduct which is: Unethical and Illegal |

lacks capacity to give consent, seek permission from the appropriate third party (NASW standard 1.03).

The forth cell appears equally unproblematic, especially in light of the revised NASW Code of Ethics which contains a number of clear proscriptions. For example, NASW standard 1.11 provides:

Social workers should not sexually harass clients. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

Standard 1.03 states:

Social workers should provide services to clients only in the context of a professional relationship based, when appropriate, on valid informed consent. Social workers should use clear and understandable language to inform clients of the purpose of the services, risks related to the services, . . . reasonable alternatives, clients' right to refuse or withdraw consent, and the time frame covered by the consent.

Both provisions closely approximate the existing laws of sexual harassment and informed consent. While these areas are generally not problematic, it is the other two cells that may present some problems for the social worker who is aware of both the ethical prescriptions and legal requirements. Conduct which is legal yet unethical.

Some of the prescriptions found in the social work code of ethics do not have a corresponding legal provision. For example, in most states, it is not legally mandated to discuss the limits of confidentiality, although this is sound ethical practice (NASW section 1.07(e)). Similarly, while it is true at law that agreements to maintain confidentiality in couple, family, marital, or group counseling are often unenforceable, there is usually no law requiring that the social worker apprise these individuals of this fact, although it is an ethical prescription that "Social workers should inform participants in family, couples, or group counseling that social workers cannot guarantee that all participants will honor such agreements" (NASW section 1.07(f)). It is clearly unethical for a social worker to engage in sexual activities or sexual contact with a current or former client (NASW section 109(a): (Social workers should under no circumstances engage in sexual activities or sexual contact with current clients, whether such contact is consensual or forced), with former clients, with client's relatives or others in a close personal relationship to the client, or to provide

clinical services to individuals with whom the social worker has had a past sexual relationship (NASW section 1.09 (b), (c), (d)). However in most states, there is no corresponding legal prohibition of sexual relationships with consenting competent adults, especially those involved with past clients or their relatives. The social worker violating these ethical prescriptions and causing harm to the client, however, could be subject to a malpractice action.

There may be times when a course of conduct is preferable, even though it violates some ethical provision. In the absence of any legal penalty, it may be desirable to gather enough information about a potential child abuse situation so that a report may be made, despite the ethical prescription that social workers should inform clients about disclosure of confidential information and the potential consequences before the disclosure is made. Similarly, while a social worker is to respect and promote the right of clients to self-determination (NASW Standard 1.02), a social worker believing that a minor has made a decision to have an abortion because of peer pressure or pressure from a boyfriend might violate this prescription and decide to discuss the issue with the minor's parents. The conduct of the social worker would be legal, unethical, and defensible. A social worker learning of a client's past criminal act might decide that it should be reported despite promises of confidentiality, even if there is no law requiring this report. Conduct which is ethical yet illegal.

Finally, there may be instances where the action by the social worker is ethically permissible, yet illegal. Under Code of Ethics standard 6.04:

Social workers should engage in social and political action that seeks to ensure that all people have equal access to the resources, employment, services, and opportunities they require to meet their basic human needs . . ., should "advocate for changes in policy and legislation to improve social conditions", and should "act to prevent and eliminate exploitation and discrimination."

Accomplishing these ethical requisites may involve the social worker in protests and civil disobedience which are in violation of the law – conduct which is ethical yet illegal. A social worker who believes that a client who is HIV positive and will not practice safeguards to prevent the spread of the virus could decide to violate confidentiality and take steps to prevent harm to another. While in some states this

is a permitted exception to confidentiality statutes, in many others it is a clear violation of HIV/AIDS confidentiality statutes and can be severely punished at law. The actions by the worker would be clearly illegal and yet ethical. Because AIDS is such a stigmatized disease and also such a challenging issue in forensic social work, maintaining confidentiality in working with people with AIDS is especially important (Poindexter, 2005). Finally, a social worker who refuses to honor a subpoena and disclose information which a client wishes to keep confidential is in violation of the law, yet there may be sound ethical reasons for refusing to disclose the sought after information. The social worker in this situation could be held in contempt of court, fined, or even imprisoned, yet be acting ethically. One positive example of this is in the *Jaffe v. Redmond* case, when a social worker steadfastly refused to reveal records in spite of a court order, and the social worker's decision was eventually upheld by the U.S. Supreme Court (Albert, 2000).

The ETHIC Model for Navigating Conflicting Standards

How social workers resolve ethical dilemmas has been a subject of some concern to the profession. Social workers are often guided by two main principles. The first, beneficence (or positive obligations), speaks to providing good, while the second principle, nonmaleficence (or negative obligations), relates to causing no harm (Reamer, 1995). Both principles affect ethical decision making. Those who favor beneficence would most likely take a proactive stance that might involve placing children in order for them to have a better life. Nonmaleficence would promote causing no harm by taking the least intervention. Social workers acting from a nonmaleficence perspective might decide to take no action and wait for further results.

Most social workers use a combination of absolute (deontological) and consequential (teleological) thinking. One can argue that the values of the social work profession are absolute in nature, but often social workers use consequential arguments to decide complex ethical dilemmas. Many social workers do not use a philosophical approach at all but base their decisions on practice wisdom (Walden, Wolock, & Demone, 1990) or the Code of Ethics (Congress, 1992). A more recent Australian study conducted by

McAuliffe (1999) found that social workers, although relatively familiar with the Code of Ethics, did not consider using it as a resource to assist decision making when confronted with an ethical dilemma.

A review of social work literature shows that several models of ethical decision making have been proposed. An early model, developed by Lewis (1984), incorporated both deontological and teleological thinking but proposes that the deontological approach should prevail, while an early model, developed by Pine (1987), focused on ethical decision making in child welfare. Adapting a philosophical approach, Reamer (1995) proposes a deontological system based on Rawls' theory of justice and Gewirth's rank ordering of conflicting duties. The following year, Conrad and Joseph (1996) presented at a NASW Conference on a process model that uses the Code of Ethics in resolving ethical dilemmas. More recently, Lowenberg, Dolgoff, and Harrington (2000) have applied a hierarchical model ranking different social work values to help social workers arrive at the most ethical decision.

Social workers have frequently raised concerns about the use of the Code to resolve difficult ethical dilemmas. The NASW Code, like other Codes, is most helpful with clear-cut good and bad ethical issues but is less helpful with the more ambiguous situations that social workers often encounter (Lowenberg, Dolgoff, & Harrington, 2000). Social workers frequently make speedy decisions without much deliberation (Walden, Wolock, & Demone, 1990). This may be related to limited time in which to make decisions, as well as perceived organizational constraints.

Developed to help social workers make ethical decisions as quickly and as effectively as possible, the ETHIC model (Congress, 1999) includes consideration of social work values, the Code of Ethics, and the social work context. Modified to help social workers facing ethical dilemmas when law and ethics collide (Cell III of the ethics and law paradigm) the model consists of the following five steps:

E: Examine Relevant Personal, Societal, Agency, Client and Professional Values

Personal, societal, agency, client, and professional values all influence ethical decision making. The social worker who relies only on professional values

is not likely to have a full range of experience on which to base decisions. For example, self-determination is a very important social work value, but how does this interface with a client with a strong personal value of family determination? Should the social worker encourage an adolescent to attend a distant college or heed the adolescent's personal value that he should stay close to his family?

In interdisciplinary settings social workers need to be aware of differing professional values of social workers and lawyers. For example, social workers may afford clients more self-determination and choice, while attorneys often offer more advice and direction to clients. A discrepancy between agency and professional values can also produce dilemmas for the social worker. This may be especially challenging for the social worker who works in a legal setting when values in terms of self determination, confidentiality and client definition may differ. An example of this conflict is evident in the previous example of the social worker employed by Legal Aid who was prevented from reporting suspected child abuse.

T: Think About What Ethical Standards, Laws, Case Decisions, and Regulations Apply and Theorize About Existing Conflicts

Social workers must first identify the relevant ethical standards in the NASW Code of Ethics. Social workers need to be cognizant of relevant federal, state, and local laws which may impact on the ethical dilemmas they encounter.

Social work ethics is different from, but often parallels, legal regulations. The 1996 Code of Ethics included the provision that social workers could violate confidentiality "when laws and regulations require disclosure without a client's consent" (NASW, 1996, p. 6). This suggests that social work ethics and the law would often coincide (Cell I in the ethics and law paradigm). The 1999 Delegate Assembly, after lengthy, heated debate, removed this provision because of concern when laws may seem in contradiction to social work values. Current laws in regard to reporting of sexual orientation for adoptive couples, as well as Proposition 187 in California that requires reporting of immigrant status, also can be seen as legal, but unethical. These laws seem contrary to social work ethical standards in regard to social justice and anti-discrimination (NASW News, Oct. 1999, p. 10).

The social worker needs to be aware of when laws and ethics practice may conflict as in Cell III of the ethics and law paradigm discussed previously. Historical examples include Jim Crow laws in the South and discriminatory welfare regulations. The Code encourages social workers to "engage in social and political action that seeks to ensure that all people have equal access to resources, employment, services, and opportunities" (NASW, 1996, p. 27). This may lead social workers to illegal behaviors like sit-downs and demonstrations that indicate a conflict between law and social work ethics.

H: Hypothesize About Possible Consequences of Different Decisions

This step makes use of teleological reasoning to resolve ethical dilemmas. If protecting confidentiality is a concern, the social worker should think about different scenarios, one in which confidentiality is maintained and the other in which confidentiality is violated. The social worker can list pros and cons about maintaining confidentiality versus breaking confidentiality.

This step may be especially helpful in instances when confidentiality law differs from ethical standards. For example, many states have very clear laws about maintaining confidentiality around HIV status, but social workers with ethical standards about protecting the safety of others may be led to violate confidentiality. Analyzing possible results in terms of all clients may help the social worker decide which is the preferred alternative for the specific incident.

I: Identify Who Will Benefit and Who Will Be Harmed in View of Social Work's Commitment to the Most Vulnerable

Often social workers must decide between two bad alternatives, rather than one that is clearly right and clearly wrong (Keith-Lucas, 1977). This step may elicit very convincing reasons for or against different courses of action.

Social work has had a lengthy tradition of concern for the most vulnerable in our society. While maintaining a fiduciary professional responsibility is important for both social workers and lawyers, the attention to the most vulnerable has been seen as distinguishing social work from the other professions

(Lewis, 1972). The current Code proposes that “social workers should act to expand choice and opportunity for all persons, with special regard for vulnerable, disadvantaged, oppressed, and exploited persons and groups” (NASW, 1999, p. 27). Therefore, this step is most important for social workers in resolving an ethical dilemma.

C: Consult with Supervisor, as Well as Social Work and Legal Colleagues About the Most Ethical Choice

Because making an ethical decision alone can be so challenging, talking to others who can suggest alternatives or present new information is essential. A social worker who has a supervisor should use this person as a first resource in ethical decision making. With current cutbacks, more experienced social workers and even beginning workers may have minimal supervision.

Social workers are encouraged to bring questions about ethical dilemmas to other colleagues for consultation. If the issue involves a conflict between social work ethics and law, the social worker should discuss personal and agency liability issues with a staff attorney.

Ethical dilemmas can be presented as part of a case conference. Sometimes social workers can help the agency develop an ethics committee. This may be especially useful in a multidiscipline agency in which the social worker works with other professionals with differing values and ethics. Differences between social workers and doctors (Roberts, 1985), public school educators (Congress & Lynn, 1994) and attorneys (Stein, 1981) have been noted (Congress, 1999). When social workers participate in ethics committees, however, their decisions about ethical dilemmas are often respected by other members (Joseph & Conrad, 1989).

Mental Health Example Using ETHIC Model

Using the ETHIC model may help social workers resolve ethical dilemmas. Both social work and lawyers stress the importance of maintaining confidentiality with clients, but this example illustrates differences between the profession that may occur:

Carmen, a bilingual social worker, has seen

Cecilia, a 34-year-old Mexican woman, for individual therapy in a mental health clinic. When Cecilia was hospitalized last year with a diagnosis of chronic undifferentiated schizophrenia, her five-year-old child, Juan, was placed in foster care.

Carmen received a call from the attorney with a public child welfare agency that had placed Cecilia's child informing her that the lawyer was preparing for a court hearing about continuation of foster care. The attorney indicated that he wanted to know the following information:

1. What was Cecilia's immigration status?
2. What relatives and friends did she have in the city?
3. What behavior led up to Cecilia's hospitalization? Was she abusive to her son?
4. Has Cecilia come regularly for treatment?
5. What has been discussed during these treatment sessions?
6. Does Cecilia have delusions about her child?
7. What antipsychotic medication is Cecilia taking?
8. How long will Cecilia remain in treatment?
9. Does Carmen think that Juan will be at risk if he is returned to Cecilia's care?

The attorney indicated that he would be subpoenaing the records for the pending termination of parental rights case.

As a first step in the ETHIC model, Carmen examined the values of her client, her professional values and also thought about the values of the lawyer who had called her. She knew that Cecilia really wanted to have her child returned. She also knew that Carmen came from a cultural background where confidentiality was viewed differently than in the NASW Code of Ethics (Congress, 2005). She looked at the values of the lawyer who saw his professional responsibility as advocating for the public child welfare agency. Also she thought about her own professional value in terms of maintaining confidentiality.

Carmen knew she should be very careful in terms of sharing information over the telephone. Often in interdisciplinary collaboration, if a member has a Dr. before the name or an Esq after the name, social workers may feel intimidated and share more information than they should. Information about clients should never be shared unless there is a release of

information form completed by the client. Blanket release forms are often inadequate and a comprehensive release form should include the name of the client to whom the information is to be released, the nature of the information to be released, and the time limit for the release of information (Wilson, 1978). Assuming that there is an acceptable release on file, Carmen should be careful about releasing information on the phone as the identity of the caller can not be verified. A better strategy is to take the caller's number and call back to verify the identity.

As a second step of the ETHIC model, Carmen knew that she should think about what ethical standards, as well as laws, applied. She reviewed the 18 provisions in the Code of Ethics that applied to maintaining confidentiality. She also examined the state statutes on confidentiality in mental health settings.

Should Carmen convey all the information she has been requested to share? The question about Cecilia's immigration status is highly confidential information, especially in an era in which there is renewed emphasis on identifying and deporting undocumented immigrants. Carmen's professional responsibility is to her client. Ethically she may choose not to report on her client's immigration status to any public agency. Carmen should be concerned about what use the attorney may make of this information, especially as this information does not seem related to the issue at hand.

Some of the above questions are informational, i.e., "What antipsychotic medication is Cecilia taking?", while others involve assessment, "Does Cecilia still have delusion about her child?" or prediction, "Does Carmen think that Juan will be a risk if he is returned to his mother?" Assuming that Carmen has a release in the folder, she can feel safest about sharing informational questions. If Carmen answers assessment questions, she must be sure that they are based on facts. Also using the strengths perspective and client advocacy model, it is often best to frame responses in a positive way. For example, "Cecilia was seen three times for individual therapy" rather than "Cecilia missed most of her therapy appointments, coming only three times." Prediction questions are the most difficult and it is best to avoid answering them if possible. Even the most skilled practitioners have difficulty predicting future violence (Rosenthal, 1993). Social workers would do well to avoid making damaging generalizations, as

one experienced social worker noted early in her career. This social worker once described a client as "the craziest client I've ever seen." Four years later, this statement reappeared when her exact words were quoted in a child welfare termination of parental rights hearing.

The best practice for a social worker receiving a call from a professional in another agency is to discuss this with the client. This affords the client the greatest respect for her autonomy and supports the Code of Ethics provision that "social workers should inform clients, to the extent possible, about the disclosure of confidential information and the potential consequences, when feasible before the disclosure is made. This applies whether social workers disclose confidential information on the basis of a legal requirement or client consent" (NASW, 1999, p. 10).

In the previous case example, a conflict of interest exists between Carmen and the attorney of the child welfare agency. Carmen's primary client is Cecilia, while the attorney is representing the child welfare agency. Carmen should be clear that she maintains confidentiality for her client. Yet Carmen is a mandated child abuse reporter, and if she learns that Cecilia is abusing Juan during a weekend visit, she is required to report it. This may challenge the trusting relationship that her client has developed with her.

In order to apply the third step of the ETHIC model, hypothesize about possible consequences of different decisions, Carmen reviewed different scenarios. If she maintained confidentiality, she might be subpoenaed.

How should she handle the subpoena? Often social workers become very anxious upon receipt of a subpoena and fearful that they must submit all confidential information. The NASW General Counsel has offered the following suggestions in responding to a subpoena:

1. The social worker should read carefully the subpoena, including the date for response, the action required, and the court and attorney issuing it.
2. The client should receive a copy of the subpoena and provide written consent to its release. If the client does not want to have the information released, now that communication to social workers is considered privileged communication (Greenhouse, 1996) the information can be kept confidential.
3. If the information is privileged or procedurally incorrect, the social worker can object by filing written

objections, requesting a protective order, or filing a motion to rescind or change the subpoena.

4. The social worker should consult with the agency attorney about the best way to handle the subpoena. (Palowy & Gilbertson, 1997)

If she did release the information, her client might not trust her again. There was also the possibility that this information might end up with federal Immigration Naturalization Service department and lead to her client's deportation.

Applying the fourth step of this model, Carmen was also very concerned about who would benefit and who would be harmed. She recognized that Cecilia, her client who was an undocumented immigrant and had been diagnosed with a serious mental illness, was especially vulnerable and might be harmed if she was to release the information to the lawyer.

As a final step, Carmen consulted with other social work colleagues and her supervisor, all of whom spoke to her about the ethical issue of maintaining confidentiality. She also was able to talk with the staff attorney who confirmed that she had a legal duty to maintain confidentiality. He was also helpful in talking with the child welfare attorney about what information could be shared with the public child welfare agency.

In using the five-step ETHIC model, Carmen was able to gain greater understanding about issues related to the case and resolve the ethical dilemma around confidentiality and the request for extensive information.

SUMMARY AND IMPLICATIONS FOR SOCIAL WORK PRACTICE AND EDUCATION

The NASW Code acknowledges that, "instances may arise when a social worker's ethical obligations conflict with agency policies or relevant laws or regulations" (NASW, 1999, p. 3). When this happens social workers are urged to "make a reasonable effort to resolve the conflict in a manner that is consistent with the values, principles and standards in the Code of Ethics" (NASW, 1999, p. 3). The Code itself does not offer any specific solution for resolving this dilemma. While there has been growing literature on social work ethics, there is little to guide the social worker in addressing ethical practice and dilemmas in forensic social work.

The following guidelines are presented to help social work practitioners and educators in this area:

1. Teach students about laws, case decisions, and regulations relevant to their client populations.
2. Recognize and teach students about differences in orientations between lawyers and social workers.
3. Encourage practitioners and students to consult more frequently with staff lawyers in multidiscipline settings.
4. Teach students skills to use in interdisciplinary consultation and collaboration.
5. Learn to identify areas in which laws and ethical standards may differ and move toward resolution.
6. Increase skills in mediating professional differences.
7. Use a model of ethical decision making in understanding and resolving professional dilemmas.

Applying these guidelines will help social work students and practitioners promote ethical practice in forensic social work practice.

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