

# Law and Social Work Ethics in Forensic Social Work



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# Presenter



# Introduction

- ▶ Purpose
- ▶ Explore ethical issues and dilemmas in forensic social work.
  
- ▶ Definition - Forensic social work
  - ▶ social work practice 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
    - ▶ mandated treatment

# Background

- ▶ Social work and law
  - professions based upon ethical standards delineated in their respective codes of ethics.
- ▶ In forensic social work settings social workers frequently work collaboratively with lawyers
  - ▶ ethics and the law usually coincide.
  - ▶ at times law and ethics collide
- ▶ Social workers ethical duty to be responsive to the ethical principles of the social work profession.

# Outline

1. role of ethics in the professions in general
2. role of ethics and law in social work practice
3. similarities and differences
  - between law and social work ethics
  - between social workers and lawyers
4. use of ethical decision model -ETHIC model
5. guidelines to help when standards are in conflict in forensic social work practice

# Literature Review

- Forensic social work has been understudied and even the term underused (Roberts & Brownell, 1999).
- Yet importance of integrating legal issues into social work education has been noted

# Literature Review

- ▶ Limited number of articles in last ten years that focused on challenges in social worker and lawyer collaboration (Cole, 2012; Taylor, 2006; Reamer, 2005; Forgey & Colarrosi, 2003)
- ▶ Ethical conflicts for the social worker in a legal setting frequently arise, especially in the area of child abuse (Forgey & Colarrosi, 2003; Anderson, Barenberg, & Tremblay, 2007)

# Codes of Ethics

- ▶ Since Hippocrates, ethics have role in guiding professional practice.
- ▶ Early codes of ethics adopted by physicians and attorneys.
- ▶ More recently codes of ethics adopted by psychologists, psychiatrists, marriage and family therapists, counselors, and social workers. (Congress, 2007).

# Purpose – Codes of Ethics

- ▶ 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
  - ▶ to protect professionals from litigation (Congress, 1999).

# Nature of Code of Ethics

- ▶ Codes of ethics combine broad aspirations as well as specific rules of conduct.

- ▶ Example of broad aspiration

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

- Example of specific rule of conduct

- “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.
- Failure to promote the general welfare of society on a global level is probably a violation of the Code 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
  - 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 Social Work Ethics Code

- o Social work value based for over 100 years
- o First professional Code of Ethics developed by Mary Richmond in 1920,
- o Chapter of the American Association of Social Work (the organization that preceded NASW) in Toledo, Ohio developed
  - o first organizational Code of Ethics (Lowenberg, Dolgoff, & Harrington, 2000).

# History of Code of Ethics

- ▶ In 1960 five years after the 1955 formation of the National Association of Social Workers a Code for the National Association of Social Workers developed.
- ▶ This 1960 NASW Code of Ethics
  - ▶ one page in length
  - ▶ 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 and 2008.

# Current NASW Code of Ethics

- ▶ A major revised 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,
  - ▶ the ethical responsibilities of supervisors, administrators, educators, trainers and researchers.
  - ▶ limits to confidentiality,
  - ▶ technology,
  - ▶ sexual harassment,
  - ▶ managed care,
  - ▶ cultural competency,
  - ▶ dual relationships-- especially of a sexual nature.

# Relevance to Law and Social Work

- ▶ NASW Code 1996 revision most relevant to law and social work
  - ▶ new section on interdisciplinary collaboration
- ▶ NASW Code 1999 revision which removed phrase about laws as a exception to confidentiality most relevant

# NASW Code of Ethics

- ▶ The NASW Code of Ethics
  - ▶ general principles by which to guide ethical behavior
  - ▶ all situations cannot be included
  - ▶ not “meant to provide a set of rules that prescribe how social workers should act in all situations”
  - ▶ applications of the Code must always consider the context in which practice occurs (NASW, 2008).
- ▶ NASW Code of Ethics more detailed than other countries (Congress & Kim, 2005; Congress & McAuliffe, 2006).

# Similarity and differences between law and ethics

## ◦ Similarity

- ▶ similar goals and underlying value perspectives

## ◦ Difference

- ▶ laws are seen as more enforceable
- ▶ ethical codes vary among professions
  - ▶ primarily enforceable among each profession's members.

# Similarities between social workers and lawyers

- ▶ Both social workers and lawyers
  - ▶ are professionals
  - ▶ maintain a fiduciary responsibility toward their clients.
  - ▶ important to be trustworthy because of
    - ▶ greater knowledge of the professional
    - ▶ vulnerability of the client.

# Differences in Role and Functions

- ▶ Despite both professions having similar fiduciary responsibility to their clients
- ▶ Significant differences in role and function
  - ▶ challenging for social workers and lawyers in interdisciplinary settings.

# Collaboration between lawyers and social workers – Child welfare

- ▶ Frequent collaboration
- ▶ Attorneys usually represent the agency in hearings involving termination of parental rights.
- ▶ Child, birth parents, and adoptive parents
  - represented by attorneys in court proceedings.
- ▶ Social workers
  - ▶ conduct psychosocial studies
  - ▶ make recommendations about the best interests of the child.

# Areas of Difference

Four areas identified as particularly challenging in interdisciplinary work with lawyers (Cole, 2012; Forgey & Colarossi, 2003; Anderson, Barenberg, & Tembley, 2007)

- ▶ 1. Definition of client
- ▶ 2. Task delineation
- ▶ 3. Differences in terms of recording
- ▶ 4. Confidentiality responsibilities

# Who is the Client

- ▶ Greatest conflict between social worker and attorney
  - Who is the client?
    - ▶ Lawyer
      - ▶ can only represent one party, either the birth parent, the foster care agency, the child, or the adoptive agency.
      - ▶ In court proceedings lawyers assume an adversarial role
        - ▶ only present evidence helpful to the party they are representing
        - ▶ suppress evidence that would be detrimental.
    - ▶ Social workers
      - ▶ represent more than one, may be all family
      - ▶ adopt more of a mediation role
      - ▶ try to reconcile conflicting positions.

# Who is the client

- ▶ the NASW Code of Ethics –
  - ▶ social workers should promote the best interests of their clients,
  - ▶ the definition of client is not defined.
    - ▶ Example conflicting demands
      - agency advocating for the return of children to their birth parents,
      - a birth mother who seems uncertain about resuming care of her children
      - a child who wants to continue to remain with his foster parents
  - ▶ For lawyers defining who the client 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

# Example – Difference in Role

- ▶ 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 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.
  - ▶ How would a lawyer approach this case?
    - ▶ Assignment to one party – parent, child, agency

# Social Worker role and task delineation

- ▶ 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 want to stay with their parent?
  - ▶ 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 to themselves or others" (NASW, 2008)
  - ▶ This provision may lead to ethical dilemmas for social workers in the child welfare field.
    - ▶ 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?

# Difference between lawyer and social worker role

- A lawyer assigned this client
  - ▶ 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
  - ▶ there would be less attention to looking at the total family situation.
- A social worker 's approach
  - ▶ looks at the total situation,
  - ▶ the needs and strengths of all family members
  - ▶ no focus on legal rights of one individual person in this family.

○

# Differences in recording

- ▶ Lawyers and social workers sometimes do not confer about the case until immediately before the court date
- ▶ Lawyers want exact details
  - ▶ Social worker may not be able to reconstruct specific facts
  - ▶ May lead to conflict between lawyers and social workers with the latter feeling inadequate.
- ▶ Need for social workers involved in child welfare cases maintain good factual records
- ▶ 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.

# Differences in confidentiality

- o 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:

# Case example - Confidentiality

- ▶ 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 seemed to be mainly concerned about promoting Mrs. Smith's legal case in retaining custody of her children.

# Discussion about Example

- ▶ Educate attorneys about familial approach to child welfare.
- ▶ If one child is abused, other child may also become abused, which ultimately may have negative consequences for the lawyer's primary client.
- ▶ Before accepting employment in a legal agency
  - ▶ Social workers need to know policies of the agencies in situations regarding child abuse.
- ▶ Then the social worker can make an informed decision about if she wants to work at an agency where legal ethics seem to override social work ethics.

# Conflicting ethical principles

- ▶ Choices between two or more competing ethical principles
  - ▶ client self- determination and client protection
  - ▶ 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 need to be cognizant of both social work ethics and laws that are applicable to the situation.

# Law and Social Work Ethics

- ❑ law and ethics are different entities
  - ▶ different sources
  - ▶ different enforcement mechanisms
  - ▶ although the two often overlap



# Four Possibilities

**CELL I**

Ethical and Legal

**CELL IV**

Unethical and Illegal

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**CELL II**

Unethical and Legal

**CELL III**

Ethical and illegal

# Both Legal and Ethical

- ▶ In the first cell, professional conduct which is both legal and ethical,
  - ▶ found most often
  - ▶ considered acceptable social work practice
  - ▶ presents few problems.
- ▶ Examples
  - ▶ Disclosure of confidential information when there is informed consent



# Not Legal and not Ethical (Cell 4)

- ▶ The forth cell
  - ▶ equally unproblematic,
    - ▶ NASW code of ethics contains a number of clear proscriptions.
    - ▶ For example, NASW standard 1.11 provides:
      - ▶ Social workers should not sexually harass clients. including sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
    - ▶ Similar existing laws of sexual harassment

# Cell 2 (Unethical and Legal )

## Cell 3 (Ethical and Illegal)

- These two areas present some problems for the social worker who is aware of both the ethical prescriptions and legal requirements.
- Conduct which is legal yet unethical or illegal and ethical.

# Ethical and illegal (Cell II)

## NASW Code of Ethics

- ▶ Instances may arise when social workers' ethical obligations conflict with agency policies or relevant laws or regulations.
- ▶ Resolve the conflict in a manner that is consistent with the values, principles, and standards expressed in the *Code of Ethics*
- ▶ Social workers seek proper consultation before making a decision. (NASW, 2008).
- ▶ Deal with such conflicts  
“through consultation, mediation, lobbying, and other forms of social action.” (Reamer, 2002, p. 66)

# No Legal Provision, Ethical

- o Some of the prescriptions found in the social work code of ethics do not have a corresponding legal provision.
- o No legal provision about discussing limits of confidentiality although this is sound ethical practice (NASW section 1.07(e)).
- o No legal provision about informing all members in couple, family, marital or group counseling of limits on confidentiality.
- o .

# Legal not ethical (Cell 3)

- ▶ 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.

# Ethical but not illegal (Cell 3)

- o Clearly unethical and illegal in many states (Cell 4) for a social worker to engage in sexual activities or sexual contact with a current client. whether such contact is consensual or forced)
- o Ethical provision forbids sexual contact with former or future clients, with client's relatives or others in a close personal relationship to the client
- o No legal prohibition of sexual relationships with consenting competent adults, especially past clients or their relatives

# Cell 3 Ethical and illegal

- ▶ Under Code of Ethics standard 6.04 social workers
- “ 1. 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...”,
  - ▶ 2. should “advocate for changes in policy and legislation to improve social conditions”, and should “act to prevent and eliminate exploitation and discrimination.”
- These activities
  - ▶ involve the social worker in protests and civil disobedience which are in violation of the law - conduct which is ethical yet illegal.

# Examples: Ethical and Illegal

1. 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).

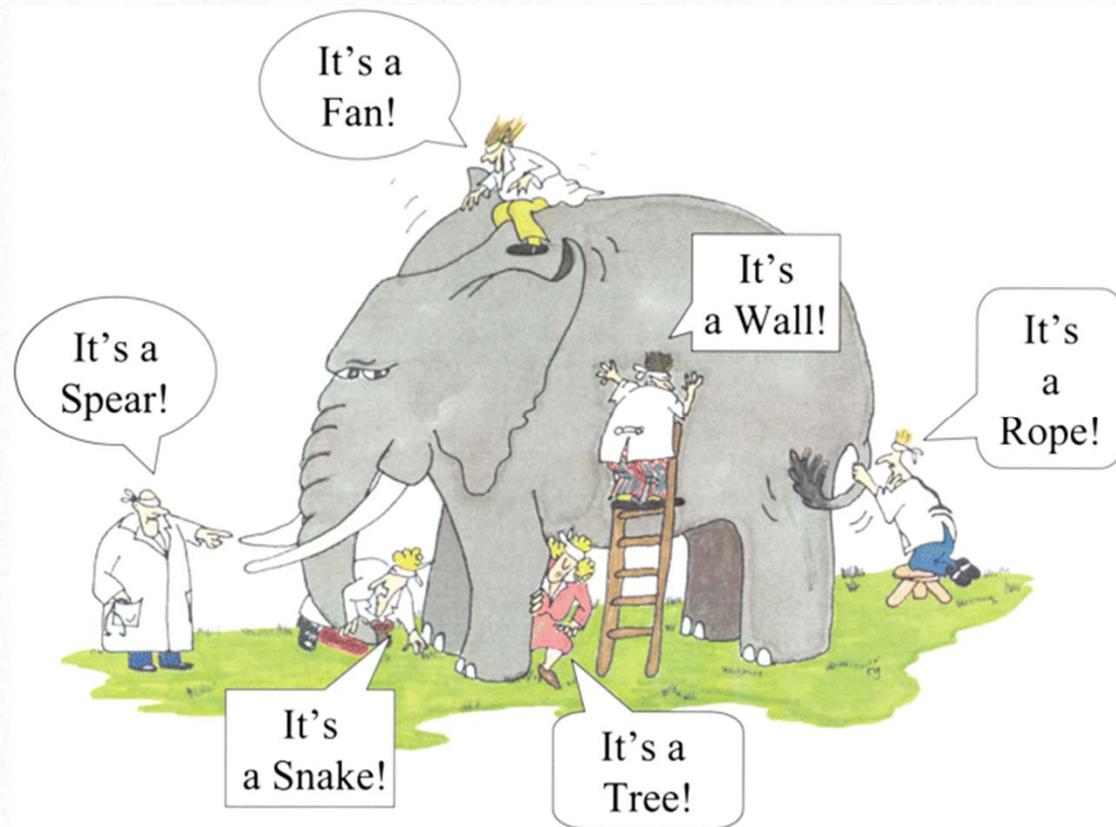
2. A social worker who refuses to honor a subpoena and disclose information which a client wishes to keep confidential is in violation of the law, yet there may be sound ethical reasons for refusing to disclose the sought after information.

- 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).

# Ethical and Illegal– Code Revision

- ▶ In 1999 this provision excluded from Code
  - ▶ “when laws or regulations require disclosure without a client’s consent.”
  - ▶ Social workers asked to maintain confidentiality except unless disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client omitted the phrase
  - ▶ profession’s ethical concern about unethical laws that undermine our social justice value system
    - ▶ laws limiting the rights of gay people or
    - ▶ laws limiting rights of undocumented immigrants.
  - ▶ The current provision in the code suggests
    - ▶ not ethical to violate confidentiality in order to follow a law or regulation that would undermine the rights of a specific population.

# Ethical Decision Making



# Resolving ethical dilemmas

- ▶ How social workers resolve ethical dilemmas
- ▶ Social workers often guided by two main principles.
  - ▶ **beneficence** (or positive obligations) speaks to providing good,
  - ▶ **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 non-maleficence perspective might decide to take no action and wait for further results.

# Ethical decision making

- ▶ Most social workers use a combination of absolute (deontological) and consequential (teleological) thinking.
- ▶ values of the social work profession are absolute in nature,
  - ▶ often social workers use consequential arguments to decide complex ethical dilemmas

# Models of Ethical Decision Making

- ▶ Several models of ethical decision making have been proposed.
- ▶ An early model developed by Lewis (1984) incorporated both deontological and teleological thinking, but proposes 'deontological approach' should prevail
- ▶ Model developed by Pine (1987) focused on ethical decision making in child welfare.
- ▶ Reamer philosophical approach (1995)
  - ▶ deontological system based on Rawls' theory of justice and Gewirth's rank ordering of conflicting duties.
- ▶ Conrad and Joseph (1996) process model
  - ▶ uses the Code of Ethics in resolving ethical dilemmas.
- ▶ Lowenberg, Dolgoff & Harrington (2008)
  - ▶ hierarchical model ranking different social work values to help social workers arrive at the most ethical decision.

# Use of Code

- ▶ Does the Code help resolve difficult ethical dilemmas?
- ▶ The NASW Code like other Codes
  - ▶ most helpful with clear-cut good and bad ethical issues
  - ▶ less helpful with the more ambiguous situations that social workers often encounter (Lowenberg, Dolgoff, & Harrington, 2008)
- ▶ 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.
- ▶ An Australian study 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 (McAuliffe, 1999)

# ETHIC Model

- ▶ Developed to help social workers make ethical decisions as quickly and as effectively as possible
- ▶ ETHIC model (Congress, 1999)
  - ▶ social work values
  - ▶ the Code of Ethics
  - ▶ social work commitment to most vulnerable
- ▶ Model consisted of the following five steps:

# ETHIC Model

- ▶ **E** Examine values – personal, social cultural, client, and professional
- ▶ **T** Think about Code of Ethics, laws, regulations and agency policies
- ▶ **H** Hypothesize about different scenarios
- ▶ **I** Identify who is most vulnerable and who will be harmed
- ▶ **C** Consult with supervisors and colleagues

# E -Examine values

- ▶ **Examine relevant personal, societal, agency, client and professional values.**
  - ▶ personal
  - ▶ societal
  - ▶ agency
  - ▶ client
  - ▶ professional values
- ▶ If rely only on professional values
  - ▶ Unlikely 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 connection
    - ▶ Example – adolescent and distant college

# Value differences – lawyers and social workers

- In interdisciplinary settings social workers need to be aware of differing professional values of social workers and lawyers.
  - ▶ social workers afford clients more self determination and choice
  - ▶ attorneys often offer more advice and direction to clients.

# Agency and Professional Values

- ▶ Discrepancy between agency and professional values
  - ▶ produce dilemmas for the social worker.
  - ▶ 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 ethical standards and laws

**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.

# When law and ethics conflict

- 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 )
  - suggests that social work ethics and the law coincide
- This provision was removed (1999) because of concern that laws may be in contradiction to social work values.
  - Example Anti immigration laws contrary to ethical standards of social justice and anti-discrimination

# Ethics and Law conflict

- ▶ The social worker needs to be aware of when laws and ethics practice may conflict
  - ▶ 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).
  - ▶ may lead social workers to illegal behaviors like sit-downs and demonstrations that indicate a conflict between law and social work ethics.



# H- Hypothesize

## **Hypothesize about different decisions.**

- o Different scenarios,
  - o one in which confidentiality is maintained and
  - o the other in which confidentiality is violated.
- o List pros and cons about maintaining confidentiality versus breaking confidentiality.
- o Especially helpful in instances when confidentiality law differs from ethical standards.
  - o Laws about maintaining confidentiality around HIV status, social workers with ethical standards about protecting the safety of others may be led to violate confidentiality.
  - o Analyzing possible results in terms of all clients may help the social worker decide which is the preferred alternative for the specific incident.

I

# I - Identify

- ▶ **Identify who will benefit and who will be harmed in view of social work's commitment to the most vulnerable**
  - Social workers have to decide between two bad alternatives, rather than one that is clearly right and clearly wrong
  - May elicit very convincing reasons for or against different courses of action.
  - Lengthy tradition of concern for the most vulnerable in our society.
    - distinguishes social work from the other professions (Lewis, 1972 ).
  - Code “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, 2008).

# C -Consult

- **Consult with supervisor, as well as social work and legal colleagues about the most ethical choice**
  - others can suggest alternatives or present new information
  - supervisor first resource in ethical decision making
- Bring questions about ethical dilemmas to other colleagues for consultation.
  - Discuss with lawyer as well as social worker supervisor and colleagues
  - Use of case conferences
  - Ethics Committee
    - Very useful in multidiscipline agency

# Example

- **Example using ETHIC model**
  - Carmen a bilingual social worker has seen Cecilia, a 34 year old Mexican woman, for individual counseling in a behavioral 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 the public child welfare agency who had placed Cecilia's child 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:

# Questions from Lawyer

- ▶ 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 anti-psychotic 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.

# Assessment questions

- ▶ Examples
  - ▶ “Does Cecilia still have delusions about her child?”
  - ▶ “Does Carmen think that Juan will be a risk if he is returned to his mother?”
- ▶ If Carmen answers assessment questions, she must be sure that they are based on facts.
- ▶ Use of strengths perspective and client advocacy model
  - ▶ 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

- ▶ Prediction questions most difficult
- ▶ Best to avoid answering them if possible.
- ▶ Even the most skilled practitioners have difficulty predicting future violence (Rosenthal, 1993).
  - ▶ avoid making damaging generalizations,
    - ▶ Example 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.

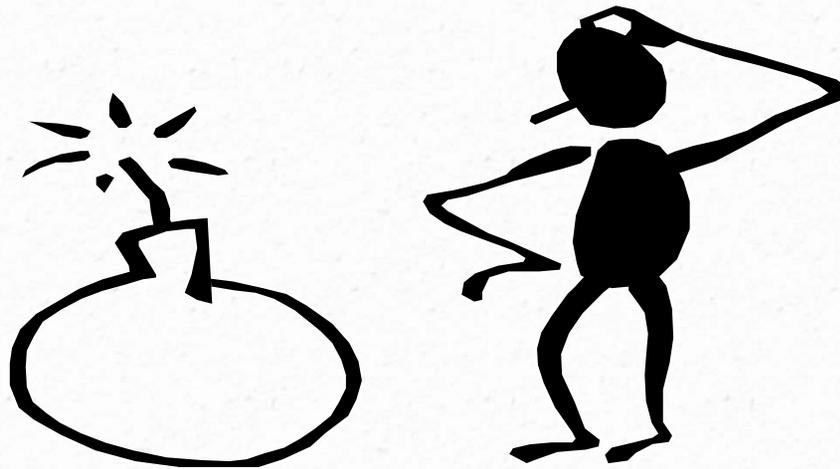
# Handling subpoenas

- ❑ How should she handle the subpoena?
- ❑ Often social workers become very anxious upon receipt of a subpoena
- ❑ Fearful that they must submit all confidential information



# Handling a subpoena

- o How should social workers handle subpoena?
- o Time bomb - Much concern and anxiety



# Responding to subpoena (2)

- ▶ Responding to a subpoena (NASW General Counsel)
  - ▶ 1. Read carefully the subpoena, including the date for response, the action required, and the court and attorney issuing it.
  - ▶ 2. 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 information is privileged or procedurally incorrect,
    - ▶ can object by filing written objections, requesting a protective order, or filing a motion to rescind or change the subpoena.
  - ▶ 4. consult with the agency attorney about the best way to handle the subpoena. (Palowy & Gilbertson,1997).

# Examine relevant values

- Values of her client
  - Important client value – retaining custody of child
  - Confidentiality viewed differently by client from different cultural background than in the NASW Code of Ethics (Congress, 2005).
- Social worker's professional value
  - professional value in terms of maintaining confidentiality.
- Values of the lawyer who had called her.
  - saw his professional responsibility as advocating for the public child welfare agency.

# Identify values (2)

## Professional value of confidentiality

- Need to be 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.
- 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.
- Better strategy is to take the caller's number and call back to verify the identity.

# Think about laws and ethical standards

- ▶ Carmen
  - ▶ Reviewed the 18 provisions in the Code of Ethics that applied to maintaining confidentiality.
  - ▶ Examined the state statutes on confidentiality in mental health settings.
- ▶ Informational questions Some of the above questions are informational i.e., What anti-psychotic medication is Cecilia taking?,
- ▶ Information questions
  - ▶ Assuming that Carmen has a release in the folder, she can feel safest about sharing informational questions.

# Hypothesize

- Conflict of interest
  - between Carmen and the attorney of the child welfare agency.
  - Carmen's primary client is Cecilia,
  - 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.
  - May challenge the trusting relationship that her client has developed with her.
- Hypothesize about possible consequences of different decisions, Carmen reviewed different scenarios. If she maintained confidentiality she might be subpoenaed.
- If she did release the information,
  - client might not trust her again.
  - the possibility that this information might end up with federal Immigration Naturalization Service department and lead to her client's deportation.

# Hypothesize

- ▶ Should Carmen convey all the information she has been requested to share?
  - ▶ Question about Cecilia's immigration status is highly confidential information, especially with focus on identifying and deporting undocumented immigrants.
  - ▶ Carmen's professional responsibility is to her client.
  - ▶ Carmen she may choose not to report on her client's immigration status to any public agency.
  - ▶ Concern about what use the attorney may make of this information, especially as this information does not seem related to the issue at hand.

# Hypothesize

- 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.

# Hypothesize

- ▶ The best practice for a social worker receiving a call from a professional in another agency is to discuss this with the client.
- ▶ affords the client the greatest respect for her autonomy
  - ▶ 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, 2008), p. 10)

# Hypothesize (4)

- If she did release the information, her client might not trust her again.
- The possibility that this information might end up with federal Department of Home Land Security and lead to her client's deportation.

# Identify

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

# Consult

- Carmen consulted with other social work colleagues and her supervisor,
  - all of who spoke to her about the ethical issue of maintaining confidentiality.
- Spoke with staff attorney who confirmed that she had a legal duty to maintain confidentiality.
- Talked to child welfare attorney about what information could be shared with the public child welfare agency.

# Summary

- ▶ 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, 2008, 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.
  - ▶ growing literature on social work ethics
  - ▶ little to guide the social worker in addressing ethical practice and dilemmas in forensic social work.

# Guidelines

- ▶ 1. Learn about laws, case decisions, and regulations relevant to client populations
- ▶ 2. Recognize differences in orientations between lawyers and social workers
- ▶ 3. Consult more frequently with staff lawyers in multidiscipline settings.
- ▶ 4. Develop 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.

# References

See attachment