

Responsibilities to do Justice

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Beyond ethics responsibilities and beyond the requirement to meet the obligations set out in the codes, all those involved in the delivery of legal services have responsibilities to see to it that justice is done. This workshop examines the obligations of judges to assure due process when hearing pro se matters, the obligations of court personnel when providing pro se information, and the obligation of legal service providers to implement triage when screening for brief services and similar responsibilities.

The Hypotheticals

The Pro Bono Lawyer

You are a volunteer lawyer at a non-profit legal hotline. You have experience in civil rights, estate planning and medical malpractice. You have received calls from people who refuse to identify themselves because they are HIV positive and want anonymous advice. Although you are highly competent to give the advice they need, the hotline considers callers to be clients and requires that you obtain information to check against the hotline's databank. You have explained the protections of the attorney-client relationship, but the callers are unimpressed and hang-up. You have brought this to the attention of the hotline and they are supporting a change to the state ethics rules that would permit anonymous advice, but will not change their policy unless the rules change.

You get a call and ask for information to do a conflicts check. You ask for his name and he tells you it is Ardvarck Schmerdenhoffener. You ask for their date of birth and they tell you it is Feb. 29th. What do you do?

The Legal Services Lawyer

You run a legal services program that provides family law help primarily on a pro se basis. Your staff checks for conflicts and sets up files before you meet with the client. You see about 35 people a week for an hour a visit. You're about 45 minutes into an interview before you wonder how many Ethiopian bartenders there are in your town. You're thinking that someone you talked to earlier in the week was talking about her husband being an Ethiopian bartender, and the client you're meeting with is. You remember absolutely nothing about the other person except the national origin and occupation of their ex. You ask the client for a moment, ask the receptionist to see if the client's ex is in the database and realize you have a problem. They have no kids, the divorce seems to be uncontested and there's little property. (and no money for lawyers)

What do you do?

What do you do if your state has adopted ABA Model Rule 6.5, which excuses you from checking conflicts, but requires you to avoid matters where you have actual knowledge of a conflict?

How does this change if you're working in a court-based self-help center?

The Court Clerk

You're a court clerk. A woman came in with her kids. She's been really beaten up and wants help with a restraining order. You give her copies of restraining order forms. You answer some of her questions about what words on the form mean and try to be nice to her. She gives you her papers to file. Your court assigns each filing to a different judge based on the number of the case file. The next file number goes to a judge who has a history of treating victims of domestic violence badly. In fact, the bar associations have rated the judge very badly and supported her removal.

Lawyers game the rotation system and you know if this woman were represented, her lawyer would never allow her case to go before this judge. They would simply wait until someone else filed and rotate to a different judge.

Do you follow the procedures to ensure impartiality and just file the papers assigning her to the next judge in line?

Do you suggest that she go make a copy or something and come back in a few minutes (anticipating that someone else will be assigned to the other judge)?

Do you try to give her a tip?

The Judge

You are a judge hearing a case for child support. The custodial mother is proceeding pro se and testifies that the father always seem to have money to spend on the kids when he has visitation, but fails to provide her with support. She does a good job of presenting her case, but cannot establish that the father has a job or flow of income. The husband testifies, under oath, that he has no job and no income. He says that he has a little money from an inheritance, but it is almost all gone. You, however, recognize this man. You have seen him working with an aluminum siding company in your neighborhood. While you have no details, it is clear he has been working.

What should you do? Is your answer different if the husband is represented by a lawyer?

The Self-Help Center Staff

You get lots of requests for help from people who need both full and limited representation. They do not qualify for legal aid. The center has been referring people to the bar's lawyer referral service. The service recently debated the merits of developing a panel of lawyers who would take cases on an unbundled basis. However, the lawyers concluded the cases would not generate enough revenue from clients and rejected the idea of the panel. You know several lawyers who have been unbundling cases, both as volunteers and as part of their practices. They do good work and would be affordable. What do you do?

The Judge

A self-represented litigant cannot afford a lawyer and has difficulty speaking English, although understands it reasonably well. At trial, the litigant has failed to cover a major element of her case. It appears the only way for you to find out if the element is present is to conduct an interrogation. However, your questioning may bring out facts that could create a problem with the INS. You believe the opposing party would share the information with the INS. What do you do?

Resources

California Family Law Facilitators ethical guidelines

<http://www.courtinfo.ca.gov/rules/appendix/appdiv5.pdf>

Court clerks office signage (info v advice)

<http://www.courtinfo.ca.gov/forms/documents/mc800.pdf>

Code of Ethics for the Court Employees of California

<http://www.courtinfo.ca.gov/reference/documents/codethic.pdf>

Analysis of the difference between California's Professional Rules and the role of the family law facilitator and family law information center attorney

<http://www.courtinfo.ca.gov/programs/equalaccess/ethical.htm>

The ABA Model Code of Judicial Conduct

<http://www.abanet.org/cpr/mcjc/toc.html>

The ABA Model Rules of Professional Conduct

http://www.abanet.org/cpr/mrpc/mrpc_toc.html