ETHICAL QUESTIONS FOR RESPONDENT PARENT COUNSEL

PRIMARY FOCUS RURAL JURISDICTIONS

1. Lack of Resources
2. Long Travel Distance
3. Zealous Advocacy

LACK OF RESOURCES, LONG DISTANCES, AND ZEALOUS ADVOCACY

1. Lack of Resources
   1. Limited substance abuse counseling options
      1. How does it impact the outcome of cases when there is only one option for substance abuse counseling in the area
      2. Ethical questions becomes: if the outcomes for resolving addictions is very poor for your dependency and neglect cases who are being referred to the “only place” in town, how do you advise your client?
      3. When it’s time to enter an Admission or Denial to the Petition, do you advise them to enter the D&N (admit to adjudication) and enter treatment or
      4. Do you advise them to contest the D&N and take their chances at trial?
      5. The possible consequence is a termination of parental rights
      6. We have to advocate for our clients:
         1. Consider: Colo. RPC 1.3(B): A Lawyer’s Duty to a Client is to act as a Zealous Advocate
   2. Limited domestic violence counseling options
      1. When there is only one option for domestic violence counseling
      2. There are often long waiting lists to get into DV treatment (sometimes 2 or more months)
      3. Client waits to get into treatment and then must attend 3 weeks of treatment (44 weeks before completed).
      4. Expedited Cases (clients have a high probability of falling outside of the expedited timeframes).
      5. Consider: Rules of Professional Conduct: Client has the right to be informed
         1. Colo. RPC 1.4(2): Explain the matter sufficiently to allow client to make informed decisions
         2. Colo. RPC 1.2: A lawyer shall abide by client’s decisions concerning the scope and objectives of the representation.
   3. Limited mental health counseling options
2. Distances in Rural Jurisdictions make Court Appearances Difficult
   1. How do you pursue your client’s objectives when the client fails to attend court hearings and fails to provide direction to the attorney?
   2. Formal Opinion 114: Court appointed attorney must assure that there is a written communication to each new client that the attorney has been appointed to represent without cost to the client. See Colo. RPC 1.5(b).
   3. Attorney in the writing should communicate the scope of the representation and what will happen if the client doesn’t come to court and doesn’t communicate with the attorney.
   4. However, we cannot decline to advocate for the client simply because the client does not come to hearings or communicate with attorney
   5. Consider: an attorney may not unreasonably limit the terms of the representation
   6. Colo. RPC 1.2 (allows an attorney to limit the scope or objective of her representation after consent and consultation); the nature of our court appointed relationship prevents our clients from negotiating at arm’s length. It would be very unusual for an attorney to limit the nature of the representation no matter how repugnant.
   7. Consider: Colo. RPC 1.1; ( An attorney shall provide competent representation)
   8. We are subject to claims of ineffective assistance of counsel. Under *Strickland v. Washington*, a parent must show that the attorney’s representation fell below an objective standard of reasonableness and that it prejudiced the parent.
   9. In *Roe v. Flores*, the U.S. Supreme Court said that filing a notice of appeal is a ministerial task, and failure to file notice of appeal gives rise to ineffective assistance of counsel.
   10. Supreme Court of Colorado concluded there is “no ethical dilemma as to whether an appeal of termination of parental rights might be frivolous.
3. ZEALOUS COURTROOM ADVOCACY (When everybody in town knows everybody else in town)
   1. If the client asks you to take an issue to hearing (You have to go in and fight: every time)
   2. You might hear opposing counsel appeal to your integrity
      1. Comments like: “you don’t really believe your client can parent these kids, do you?”
      2. Answer: “this is not about what I believe; this is about what my client has asked me to do”
   3. Consider Colo. RPC 1.3(B); a lawyer’s duty to a client is to act as a zealous advocate
   4. Concern that some lawyer’s may think that open disagreement after a ruling demonstrates their zealous advocacy for their clients. (Flailing ones arms, rolling one’s eyes, or slapping a paper or a pen on the table are all ways to show disfavor of an attorney or the court: this behavior is inappropriate).
   5. This behavior frays everyone’s nerves and it attempts to train the attorney’s not to object again.
   6. Consider: attorney’s must respect the court
      1. The oath of admission for each Colorado lawyer includes: “I will maintain the respect due to courts and judicial officers”
      2. Preamble to the Colorado Rules of Professional Conduct states: “A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials.
      3. In *Losavio v. District Court*, the Court held, “lawyers, as officers of the Court, must maintain the respect due to courts and judicial officers.”
4. CLIENT CONFIDENTIALITY AND ZEALOUS ADVOCACY:
   1. As RPC, we represent our client’s position. How do we approach the Court’s questions about our client’s communication with us?
   2. Consider Colo. RPC 3.3: duty of candor with the court (must not make false statement of material fact or law)
   3. Also Consider Colo. RPC 1.6 (absent consent of client, must not reveal information relating to representation of client)
   4. When drafting the written agreement between you and your client, consider including a provision that addresses the issue
   5. When addressed by the Court, frame the answer in a way that is not negative to your client and ask for a short continuance to reset the hearing.

References

Colorado Rules of Professional Conduct

Responsibilities of Respondent Parents’ attorneys in Dependency and Neglect Proceedings, 114 Op. Colorado Bar Association Ethics Committee (adopted 2006), (modified 2010).

*Strickland v. Washington*, 466 U.S. 668 (1984). *See C.Z*., 226 P.3d at 1063 (“thus, the obligation of court-appointed attorneys to advocate for indigent parents in termination proceedings is no different from the obligation imposed on counsel appointed to represent criminal defendants on appeal.”); *People in Interest of V.M.R*., 768 P.2d 1268, 1270 (Colo. App. 1989). (“In such cases, a contention of ineffective assistance of counsel requires a determination whether counsel’s conduct so undermined the proper functions of the adversarial process that the proceeding cannot be relied on as having produced a just result.”)

*Roe v. Flores-Ortega*, 528 U.S. 470 (2000).

*Losavio v. District Court*, 512 P.2d 266 (1973).