

You want me to do what?

Ethical practice within interdisciplinary collaborations

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Abstract

The benefits of lawyer and social worker collaborations are numerous. However, due to differences in the ABA Model Rules of Professional Conduct and NASW Code of Ethics, tensions may surface. Potential solutions to give social workers improved ethical guidance are considered for use in a law clinic setting.

Keywords: ethical decision-making, value conflicts, social work, Code of Ethics, law clinic

1. Introduction

Social workers are increasingly recognized as beneficial members of interdisciplinary teams in addressing the complex needs of clients who seek legal services. Law school clinics are leading the way by introducing partnership initiatives to engage law and social work students (Benson, 2007). The relationship between law and social work is certainly not new. As early as 1917, Mary Richmond, a key architect of modern social work, acknowledged the role of legal authorities in formulating parts of her conceptual framework for casework. The very structure from which Mary Richmond drew her theoretical base could trace its roots from the landmark legislation, the Elizabethan Poor Law, which was a declaration of the legal rights of the poor (Fogelson, 1970). Similarly, Kruse (2004) noted that “the creation of the juvenile

court in the early 20th century was an experiment in ‘law as social work’ and it endeavored to conduct its investigations and the supervision of children in accordance with the principles of social work” (p. 58).

There are several benefits to collaborative arrangements between these two professional groups, including promotion of social support in the work environment, which can in turn reduce stress, as well as empathy training (Galowitz, 1999; Weil, 1982). In spite of these benefits, Taylor (2006) noted that “these collaborations are often characterized by conflict as professionals negotiate roles, duties, and varying ethical responsibilities” (p. 639). The fact that social workers are mandated reporters of child abuse/neglect, while lawyers are not, is a critical issue. Another issue is that of ethical and legal imperatives of client confidentiality. Corbin (2007) used the term “conundrum of confidentiality” to describe points of contention between the mental health system and the criminal justice system as each has an ethical responsibility to maintain client confidentiality. The California Supreme Court decision, *Tarasoff v. Regents of the University of California* (1974; 1976), set a standard for practitioners to reveal confidential information in their duty to warn others of the potential dangers from a client. Reamer (2003) outlined a series of steps to be taken by clinicians if their clients pose a threat to another party such

as consulting an attorney who is familiar with state law concerning duty to warn and/or protection of third parties. Undoubtedly, these types of concerns often serve as sources of ethical tension within interdisciplinary partnership(s). In the midst of these tense moments, a social worker might silently ask a rhetorical question: “They [lawyer colleagues] want me to do what?”

The NASW *Code of Ethics* outlines a range of ethical responsibilities for professionals working within interdisciplinary collaboratives. For example, Section 2.03 (a) states, “Professional and ethical obligations of the interdisciplinary team as a whole and of its individual members should be clearly established” (p. 262 as cited in Reamer, 2006) and Section 2.03 (b) states, “Social workers for whom a team decision raised ethical concerns should attempt to resolve the disagreement through appropriate channels. If the disagreement cannot be resolved, social workers should pursue other avenues to address their concerns consistent with client well-being.” (p. 262 as cited in Reamer, 2006). Reamer (2006) noted, “Ethical decision-making is a process... social workers should take into consideration all the values, principles, and standards in this *Code* that are relevant to any situation in which ethical judgment is warranted...decisions and actions should be consistent with the spirit as well as the letter of this *Code*” (pp. 252-253). It seems that when ethical questions do arise, the *Code’s* standard regarding interdisciplinary collaboration and guidelines will be a critical point of reference and may assist in clarifying for a social worker when one might be wading in “muddy” ethical water.

1.1 Purpose

This paper explores pathways by which ethical differences emerge and are addressed within lawyer-social worker interdisciplinary collaborations. The paper will begin with a brief overview of the evolution of social work and law in terms of each profession’s ethics and values. Several scholars in the legal profession have written about collaborations with social workers

in law school clinics as well as law firms (Benson, 2001; Faller and Vandervort, 2007; Norwood and Patterson, 2002). Case examples will be cited from law journals to provide further insight into the emotionally charged questions that linger in the aftermath of ethical tensions and/or dilemmas. Finally, the author addresses potential solutions that social workers may find useful for guidance in ethical decision-making.

2. History of Ethics and Values in Social Work

Abraham Flexner may have provided some impetus for the social work field’s developing a unique code of ethics by posing the question of whether social work was, in fact, a profession. In his paper entitled “Is Social Work a Profession?” published in 1915, he posited that social work had not met all of the criteria of a profession but that in some ways it was closer to doing so than law and medicine. He also stated that another important requirement of a profession is that it should have “spirit” or “values.” According to Flexner (1915), “in the long run, the first, main and indispensable criterion of a profession will be the possession of a professional spirit” (p. 24). The social work community began to have a conversation about ethics shortly after Flexner’s report. Interestingly, Mary Richmond has been credited with drafting an early social work code of ethics as early as the 1920s (Reamer, 1987).

Reamer (1998) identified distinct periods of development for the social work code of ethics: the morality period; the values period; the ethical theory and decision making period; and the ethical standards and risk management period (p. 488). The morality period began in the late nineteenth century when social work began to emerge as a profession. During this period, social work was much more concerned about the morality of the client than about the morality or ethics of the profession or its practitioners. The values period, which began in the early twentieth century, ushered in a focus on social justice concerns. External influences of society such as poverty, disease, and education opportunities

were appreciated (Sparks, 2006, p. 53). This period is relevant to developments today as many law schools around the country are seeking to fill the legal needs of their communities and to ensure better access to justice for underserved and marginalized populations.

According to Margolin, Berensen, Martin, Pearlman, and Zavez (2010), the legal profession appreciates the need to support underserved families who often face legal issues alone. Typically, if any legal assistance is available, it is very limited. In essence, the focus is on empowering clients and not on assessing whether the client is worthy or unworthy of receiving assistance due to a divorce or modification of child support payments. In this way it seems that both professional groups have some commonalities regarding “what ought to be” for marginalized populations.

Social workers operate under broad ethical principles which are based on six core values: service, social justice, dignity and worth of the person, importance of human relationships, integrity, and competence (NASW Code of Ethics, 1999). Values serve as ideals of what is right. Inevitably, there will be a “collision” involving one’s personal values and those values cited in a professions’ *Code* (Spano and Koenig, 2007). In recent years, cases relating to controversial issues such as abortion, HIV/AIDS transmission, assisted suicide and genetic technologies have prompted social workers to re-evaluate the ways in which they went about tackling ethical dilemmas.

Before attempting to identify, understand, and comment on ethical dilemmas, social workers should examine their personal values. These personal values influence how dilemmas are viewed and whether or not a practitioner accepts the profession’s core values. Understanding differences in individual value bases has special relevance as practitioners interact with clients operating from value positions different from their own (Sparks, 2006). For example, the social work value of self-determination may come into conflict with the attorney role of advisor. A lawyer’s goal is to win the case for a client, and in order to do

so, it is usually necessary and appropriate to give advice to the client. In social work, the goal is not to give advice to clients. At times, clients seek and ask for advice. The ultimate goal is for clients to think and act for themselves.

Anticipation of potential conflicts between personal and professional values among professionals might explain why ethical decision-making models have enjoyed increasing prominence in the literature. Reamer (2006) noted that “to approach the analysis of ethical dilemmas deliberately and systematically, social workers and other professionals sometimes draw on a wide range of theories and principles developed by moral philosophers known as ‘ethicists’ concerning issues of right and wrong” (p. 10). Reamer (1990) provides six guidelines that prioritize some ethical principles over others. Loewenberg, Dolgoff, and Harrington (2000) suggest an “Ethical Principle Screen” that orders seven ethical principles in a hierarchy. Rhodes (1991) argues for a “kind of informed relativism” (p. 45) that engages in dialog and that considers the context in which ethical decisions are made. Spano and Koenig (2007) propose a six-stage ethical decision making model addressing conflicts between professional and personal worldviews. Hartsell (2006) presents a model that defines three elements—i.e., life, choice, and relationship—and suggests that maximizing each element is the best possible resolution to an ethical dilemma.

Sadly, robust discussions of ethical decision-making model(s) for use by social workers in legal settings is lacking based on this author’s preliminary review of the literature. According to Anderson, Barenberg and Tremblay (2007), “the basic idea is that a lawyer working with a social worker will have to adjust his/her role responsibilities away from the typical unfettered zeal and commitment to client autonomy that has been taught in law school...while social workers attend to a larger ‘moral community’ and to social justice concerns, lawyers attend to the wishes of their clients” (p. 2). The dialogue among professionals that emerges as a result of these dissimilar orientations suggests that an ethical

decision-making model could assist professionals in making sense of salient points within the discourse. Furthermore, ethical decision-making models might be utilized differently within lawyer and social worker collaborative(s) as compared to other settings such as hospice or child welfare. Future research should seek to generate a compendium of case examples compiled by social workers to help assess the validity of this claim.

2.1 History of Ethics and Values in Law

The American Bar Association (ABA) adopted the Canon of Professional Ethics in 1908. Over the past couple of decades, emphasis on legal ethics has increased in both classroom and career settings. Ethical practices of lawyers received significant attention during the Watergate scandal, as it is widely regarded as an example of misconduct among lawyers (Reamer, 2006, p. 5). Once the details became public, it was undeniable that a more comprehensive set of ethical standards was needed. In 1969, the *Model Code of Professional Responsibility* was adopted, in which there were three subdivisions: canons, disciplinary rules, and ethical considerations. The latest iteration (currently referred to as the *Model Code of Professional Conduct*) includes a statement of purpose, scope and a list of 58 rules that are divided into eight different subject areas such as Conflict of Interest, Responsibilities regarding Nonlawyer Assistant, and Truthfulness in Statements to Others (ABA Center for Professional Responsibility, 2008). McCauley (2000), in his final report on behalf of the ABA Multidisciplinary Commission which sought to understand the dynamics of multidisciplinary practice in the legal profession, concluded that independence, loyalty and confidentiality were fundamental values.

3. The Practice of Law and Social Work

According to the American Bar Association's (ABA) *Model Rules of Professional Conduct*, a lawyer is a representative of clients, an officer of the legal system and a public citizen

having special responsibility for the quality of justice (ABA, 2008). A lawyer's varied roles include advisor, advocate, negotiator, intermediary, and evaluator. Lawyers are generally only concerned with legal issues and conditions that directly affect a specific case. In addition, the legal profession commonly reflects an individualistic and non-collaborative view. The lawyer seeks to maintain a role as legal counselor by working with the client's emotional concerns to provide effective legal representation, and not "working through" them in the therapeutic sense (Anderson, Barenberg, and Tremblay, 2007).

The social worker's role is typically defined by the particular model of interdisciplinary practice being employed—social worker as direct service provider (counselor, therapist, social service/case management provider), social worker as expert consultant, or social worker as member of a legal team (Zavez, 2005). The social worker will understand that, although the scope of the lawyer's counseling may be more comprehensive with social worker input, the lawyer's role is ultimately to represent the client's stated interest. Thus when entering into collaborative practice, it is the responsibility of both lawyer and social worker to clarify practice models, define role expectations, and identify potential professional responsibility concerns (Anderson, Berenberg, and Tremblay, 2007; Coleman, 2001).

The literature sheds light on the underlying processes that lead to role identity confusion. According to Taylor (2006), "since professional social identity can serve so many functions for individual workers and the workgroup... it important to consider how social identities of social work and law students evolve in graduate school and ultimately reflect their organizational work roles" (p. 641). Dickens (2006) used semi-structured interviews to study the perspectives of lawyers and social workers who worked together on child welfare cases in England. Direct care social workers and their managers viewed the lawyers' roles differently. Direct care workers considered the most successful lawyer interactions

to be those in which lawyers exhibited care and understanding, but managers thought the lawyers should perform in the “zealous advocate” role for which they are known. Confusion also existed among lawyers as to their roles in the cases. The lawyers knew they were responsible for the legal aspects of the case, but this could be interpreted to cover nearly all of the social worker’s duties as well, since these are bound to have legal ramifications. This confusion was compounded by the fact that many direct care social workers welcomed an enlarged role of the lawyers who often had greater experience in the field.

In her research, St. Joan (2001) surveyed law and social work students and primarily focused on their perceptions of a “collaborative model.” The social work interns noted how power seemed to be fully in the hands of the legal professionals and that the social work students sometimes felt that the law students and faculty with whom they interacted dismissed their concerns. It was uncertain whether this was due to the law professionals’ focusing their attention on the legal concerns of their clients and leaving social workers to cover their other needs or to there being a perception of how involved each discipline needs to be in the other’s element.

St. Joan further explored how differing opinions regarding collaborative models also compounded this issue. There were two main models of collaboration, the “hand-in-hand” and “side-by-side” models. In the former, social work and law students worked together on most issues, whether they were dealing with more legal aspects of the case or helping their clients with their social work needs. In the latter, social work and law students delegated duties and each worked separately to accomplish what needed to be done. While both collaborative models accomplish the same goals in regards to the client, they have different implications for the collaborative process. Social workers and law students who incorporated the “hand-in-hand” technique shared that they felt more knowledgeable about the needs of their client and also felt more support from their partners.

Triangulation was also less likely to occur when lawyers and social workers work hand-in-hand. St. Joan (2001) used this term to capture instances where a client would complain about the law student to the social work student and then complain about the social work student to the law student.

In terms of “side-by-side,” several law students expressed a preference for working independently, each working separately on separate issues, but wanting to come together to talk when needed.

One student expressed concern that “if we do everything jointly, we may get group-think” (St. Joan, 2001, p. 6). What this means for social worker-lawyer interaction is that social workers may be more inclined to a collaborative model that emphasizes the different fields working more as a team together for most issues, and there being less power disparity in the workplace. Social workers may also lean more toward the “hand-in-hand” collaborative model than the “side-by-side.” On the other hand, lawyers may be more solitary and, if needed, may desire to work “side-by-side.” It is not known which collaborative style might increase the likelihood of ethical tensions; thus, future research should focus on the risk factors associated with each model to fill the gaps in the knowledge base.

4. Ethical Decision-Making Model and Resolution of Ethical Tensions

This discussion of collaborative models illustrates the pathway by which tensions emerge. An ethical decision-making model could be used to guide ethical practice(s) between social workers and clients but could also be used within interdisciplinary collaborative(s) as the critical thinking tool(s) to address the underlying assumptions of ethical tensions. The aim of social workers within such collaborative(s) is to exert their influence through their status and through their well-developed systems, such as the *Code*, for recognizing ethical issues or dilemmas. Collaborative relationships do not tend to entertain

power balances very well. The outcome may not be in the best interest of the client from a social work perspective but at least it is an attempt to sort through the issues in a rational manner that promotes critical thinking.

Hartsell (2006) conceptualized an approach to ethical decision-making that attempts to reduce choices to a set that is necessary and sufficient. In its simplest form, this approach has three values and one principle. In his model, Hartsell (2006) suggests that a small set of elements constitutes the context in which ethical decisions are made. The three elements are life, choice, and relationship. Only the living can make ethical decisions, so life is a necessary part of the context. Ethical decisions involve choices about behaviors in relationships with other people. Therefore choice and relationship are also essential elements of the context. Together, the elements life, choice, and relationship form the context in which an ethical decision is made, and they therefore provide the values necessary for an ethical decision.

An underlying assumption in this model which is a departure from most models is the belief that “there is no resolution to a genuine dilemma” (p. 6). Therefore, when an ethical dilemma exists, the best one can do is to maximize all three elements of the context, and this is the one overriding ethical principle in the Hartsell model. Maximizing means maintaining as much as possible without compromising any of the three elements. To maximize life means to support life and processes. To maximize choice means to acknowledge available options and to allow free selection from among them. To maximize relationship means to communicate in ways that promote continued communication. Relationship is the voluntary interaction between two individuals. It includes the spoken and unspoken rules about that interaction. Relationship is part of context because the ethical dimensions of choices that exist outside of relationships are immaterial. No individual may ethically violate the context. Context, as stated previously, includes life, choice, and relationship. For one to make

decisions regarding the life, choice, or relationship of another violates the ethical context.

5. Case Examples

In order to further an understanding of ethical tensions within the context of the Hartsell ethical decision-making model, we examine two cases that are likely to be seen in law clinic settings as cited in the literature (Anderson, Tremblay & Barenberg 2007; Benson, 2001; Galowitz, 1999; St. Joan, 2001).

It should also be noted that social work interns and social work faculty members in law clinic settings are typically asked to sign a confidentiality agreement protocol before meeting with clients (See Appendix). The agreement does not say that social work interns cannot report to the Social Services department if child abuse or neglect is suspected (although this may vary among law clinics depending on the state or jurisdiction). For example, in Virginia, lawyers are not mandated reporters of child abuse or neglect, and there is no case law or attorney general opinion on interdisciplinary collaboration (D.S. Margolin, personal communication, March 20, 2012). On the other hand, social workers in the state of Virginia are mandated reporters of child abuse or neglect (D.S. Margolin, personal communication, March 20, 2012). In this case, The Virginia State Bar Association Ethics Panel should be consulted for guidance in developing a written protocol for all students and faculty (D.S. Margolin, personal communication, March 20, 2012).

According to a protocol approved by the Virginia State Bar Association Ethics Panel and administered at the University of Richmond Family Law Clinic (See Appendix), any time a social work student or faculty member identifies a potential obligation to report, the law clinic director must assess the severity of the situation, which may include further investigation with the client’s consent. The client must be counseled on each step and ultimately must consent to report. If the client does not want to report their alleged

role as the perpetrator of child abuse, the law clinic director is ethically bound to report the abuse if there is strong evidence that imminent bodily harm is about to occur to a child (Margolin, Berenson, Martin, Raab and Zavez, 2010). An ethical dilemma may emerge for a social work student or social work faculty member in terms of deciding whether to breach confidentiality by reporting the suspected abuse. A circumstance such as this might occur if the law clinic director did not assess that a report is warranted but the social work student and faculty member disagree with the assessment. As such, the following case examples will provide further insight into the etiology of an ethical dilemma within a law clinic setting.

5. 1. Case Example 1: Sally and Ted

A social work intern is serving as part of an interdisciplinary team at a law clinic and is working with four faculty supervisors who are also lawyers, one faculty social work field instructor, as well as 25 law students practicing law under a state statute treating them as lawyer-equivalents. A law student, faculty supervisor, and social work intern meet with Sally, 40 years old, whom the clinic represents in a contested divorce proceeding against her husband, Ted. During the meeting, Sally tells her legal team that Ted, when drinking, sometimes hits his six- and eight-year-old children with his fists. The most recent incident of this violence occurred a month ago, when the family was reunited for a short spell. At present, the children reside with Sally. Visitation and custody are matters for which the clinic is working on Sally's behalf. Sally believes that the children are safe as long as they are not left unsupervised with her husband. She does not want Social Services to get involved in her life.

The law student who has heard the information cannot reveal it unless Sally consents. By contrast, unless the social work role within the clinic provides some exemption, the social work intern might be obligated to report what has been learned to the state agency authorized

to investigate child abuse (although laws will vary from state to state). According to the clinic protocol, if a social work intern identifies a potential obligation to report, the law and social work faculty supervisors must assess the severity of the situation, which could include further investigation with the client's (Sally) consent. If faculty supervisors have strong evidence that imminent bodily harm is about to occur to Sally's children, the social work intern is exempted from the mandated reporting requirement. The legal team will determine the next step and the social worker will assume a consultative or advisory role. If it is deemed that Sally's children are in imminent danger, the law students and law faculty may ultimately decide to report the abuse to Social Services with or without Sally's consent depending on the severity of the circumstances.

5.2. Case Example 2: Joe and his Family

The second case scenario involves the same team as listed in our first case example. The team is representing Joe, a 15-year-old 9th grader who lives with his mother, stepfather and 10-year-old sister. Because of Joe's recent truancy, Joe's school filed a Child in need of Services (CHINS) petition with the local District Court. In an upcoming hearing, a judge will order a plan recommending particular interventions to address truancy. In the course of the team's interview with Joe, he mentions that his stepfather is an alcoholic and that when drinking he has a "bad temper." Joe informed the team that his stepfather has hit him on several occasions in the past two years. These incidents have been escalating in frequency and intensity. The most recent incident occurred four weeks ago when his stepfather slapped him in the face and pushed him against a wall. This was about the time Joe stopped going to school. Joe's mother is not aware of these incidents, and Joe states emphatically that he does not want the team to tell anyone about these incidents. He does not want Social Services involved, he wants to stay at home (and does not want foster care or residential

placement), and he wants to try to graduate with his friends. He is also concerned that if his mother learns about these incidents it will create more tension between her and his stepfather. The law student and supervising attorney feel strongly about representing Joe's stated interest. He wants to stay at home and says he will make every effort to attend school.

If Joe told his story to the social work intern, there would be a potential obligation to report the stepfather's violent behavior to Social Services based on what is stipulated in the law of that particular state. In this scenario, the social work intern is meeting with Joe and his mother alone to complete a social history intake form. The social work intern would notify the faculty supervisors to determine whether the violent behavior would be reported. If Joe were to tell his story to the entire legal team (inclusive of the social work intern), they would have no such obligation to report the incidents of abuse to Social Services but would still notify the faculty supervisors. Even if the members of the legal team have no statutory obligation to disclose the stepfather's behaviors, they cannot act as though they never learned about the violence. While they may opt not to make a report, they will acknowledge the difficult position in which Joe finds himself. Effective legal representation will include careful, thoughtful counseling of Joe about his needs, wants and interests, including his safety, as he lives with the stepfather.

5.3 Application of Hartsell model to Case Examples

There are recurring themes in the lingering questions at the conclusion of each case example. Each question points to the need for the social worker to come to terms with or resolve internal conflicts regarding the ethical "duty to report." For the purposes of illustration, the Hartsell model will be applied to the case examples.

According to Hartsell, in order to maximize life, the team would seek to protect Joe's life by removing him from the abusive relationship

with his father. In Sally's case, the children are not living in the home with their father but visit him while the divorce is in process. In order to maximize life for the children, there must be no unsupervised visits. Court ordered supervised visitation for Ted to see his children is reasonable. Sally's children would be protected by having a third party present during visits. Regrettably, a court mandate is not in place because the allegation of child abuse was not reported to Social Services so there is no official record. In order to maximize Joe's right to make choices that he perceives are in his best interest, the social work intern could support the client's choice to remain in the home and also present potential consequences to the team (e.g., if client remains in the home there will be substantial risk of harm). Similarly, Sally has a right to determine whether there is a need for intervention from Social Services. It seems that, thus far, more weight is being given to each client's right to choice as opposed to life. If the members of the legal team (inclusive of the social work intern) in both of these cases want to support life, it would have to be determined that Joe as well as Sally's children are in imminent danger.

It is important to note that *Model Rules 1.6(b)(1)* states that "the lawyer may disclose to prevent reasonably certain death or substantial bodily harm." The lawyer would need to determine whether the previous abuse makes it "reasonably certain" that Joe or Sally's children will be abused or whether the violence constitutes substantial bodily harm. In Joe's case, if the lawyers fear for Joe's safety in a palpable and urgent way, one trusts that they will seek outside intervention even if their client refuses to authorize them to do so. Sally's children are in a vulnerable position and need to be protected. Sally will not always be able to guarantee while the divorce is in progress that visits with Ted will be supervised. Since there is no restraining order in place, the legal team needs to determine if there is risk of "substantial bodily harm" for Sally's children. This author is not aware of an American Bar

Association (ABA) guideline or checklist to identify which sets of circumstances indicate the threat of “substantial bodily harm.”

How does legal counseling differ from the counsel of a social worker? In Joe’s case, the lawyers will want to ensure that he understands that they (lawyers) are his allies and his confidants, but that they are still worried about his protection. They will explore with him his competing needs to remain in his current home and at the same time not to be hurt. The lawyers may not persuade Joe that a report to some authority will serve his longer term interests, but they must be sure that Joe understands that option and its potential advantages. His perceptions and his predictions may not be realistic—not necessarily because he is a child, but because many clients, young and old, can benefit from a more objective viewpoint. This counseling is consistent with considerations that a social worker would make in accordance with sound ethical practice. According to Koenig, Chapin, and Spano (2010), “a social worker who is part of a multidisciplinary team must identify possible alternatives and determine which alternatives are most feasible for dealing with the situation...creatively brainstorming about potential interventions and their consequences demonstrates ethical practice and seems critical to successful outcomes” (p. 143).

The lawyers may hope that Joe will give them permission to intervene to protect him against his stepfather (while they simultaneously hope that some intervention will actually lead to his protection). But unless their worry about his well-being is immediate and desperate, one might assume that the lawyers will not betray Joe’s wishes about confidentiality and will not disclose the violence to any other person. This result may be more comfortable for the lawyers to accept than for the social worker, who has been trained differently and might seem to be more paternalistic. Similarly, in the case of Sally, the social work intern could make a professional judgment that it is best to betray Sally’s wishes regarding intervention from Social Services. If the overarching goal is to keep the children safe, it

seems that reporting the abuse might also present a set of consequences, such as court ordered counseling for Ted, not currently in place. In either scenario, there is a need to engage in a series of soul-searching conversations about respective roles (social work and law) in an effort to avoid role identity confusion.

In order to maximize the relationship element, terms/expectations of the relationship for clients in both scenarios need to be clarified. Spano and Koenig (2003) note that competent practice rests on the realization that relationships between workers and clients, as well as among team members, are the vehicle that creates the possibility to manage difficult dilemmas. In both case examples, terms and expectations of the social work intern and social work faculty field instructor with respect to the legal team should be clarified. Joe needs to understand that the social work professionals have a duty to both him and his mother. In Joe’s case, the social work intern would need to clarify Joe’s expectations for confidentiality and for protecting him from potential abuse from his father. The objective here is for Joe to have the opportunity to make fully informed choices about how to continue. If the social work intern is unable to fulfill the expectations that both Joe and his mother have for the professional relationship regarding confidentiality, the Hartsell model would lead the social work student to request removal from the case or to decide, in consultation with social work faculty, to negotiate with Joe and his mother to find acceptable terms.

Hartsell suggests that this model could be taught to clients such as Joe and Sally. In Sally’s case, if she thought about her dilemma in terms of life, choice, and relationship, she may come to a different conclusion. She might decide that she would rather waive her right to confidentiality in order to protect the lives of her children, who may still have a relationship with their father in the form of court ordered visitation after the divorce is finalized. In Joe’s case, if the social worker does not report the abuse and Joe goes back home and is brutally beaten by his stepfather, the principle

of life has been violated. If the social worker consults with a personal attorney, determines that Joe is in imminent danger and decides to report against the wishes of the legal team, a violation of Joe's wishes regarding choice will occur.

This exercise helps us to understand Hartsell's assertion that "attempting to resolve a dilemma by prioritizing one value over another is ineffective because although doing so may reduce distress—in effect by changing the intensity with which one holds a belief and thereby reducing the dissonance—it does not eliminate the dissonance because the two beliefs remain inconsistent...in some cases, the best we can do is to accept that the dilemma is unresolvable" (p.6). Although the underlying principles in this model—i.e., life, choice, relationship—may not square with a legal plan of action, if members of the legal team are receptive to engaging in this type of discourse, they might conclude that plausible arguments are being made by social work team members. If this process works well, the lawyers will have a better understanding of their role obligations and social workers will feel that their voices have been heard.

6. Conclusion

Interdisciplinary collaborations between social workers and lawyers are expected to increase as social work skills are recognized as an enhancement to client services (NASW, 2008). Observers who have addressed the concept of social worker collaboration all agree that the positive impact on client representation clearly outweighs the potential challenges raised by such arrangements (NASW, 2008; Colarossi and Forgey, 2006).

Most practitioners and educators would agree that ethics are lived and practiced in every moment of social work and are therefore one of the "most important aspects of social work education" (Swindell and Watson, 2007, p. 2). Swindell and Watson also point out that social work students should be engaged in a pedagogical framework that enables them to see ethics as something that they "are" and not merely a *Code* to follow. Social

work students who intern in the legal aid setting(s) have an opportunity to experience the benefits of this type of collaboration and develop ethical problem solving skills early on in their careers.

In light of the distinct ethical mandates between the two professions, one potential solution could involve the use of a framework to manage conflicts among social workers' personal worldviews, their professional code, and the code of another profession (law). In the short term, the model proposed by Hartsell (2006) would be a logical starting point because it sets the parameters for critical thought processes and provides a rational framework to guide "soul-searching" conversations that take place among team members.

One should also be mindful of the fact that the *Code of Ethics* of the National Association of Social Workers loosely follows the ABA *Model Rules of Professional Conduct* but provides less protection for social work professionals regarding malpractice and other liabilities (Woodcock, 2011). The development of a companion statement to accompany the *Code's* existing standard regarding interdisciplinary collaboration, with specific language pertaining to legal settings, may be warranted and could give social workers improved ethical guidance.

A long-term solution according to Woodcock (2011) is for the social work profession to adopt an explicit legal model. If social workers wish to have a complete and effective ethical code, capable of guiding them in many varied situations similar to scenarios outlined in this paper, there is no need to reinvent the wheel. One potential solution might be for the social work profession to adopt ABA's *Model Rules of Professional Conduct* as a first step. Woodcock (2011) notes, "Indeed, why not use what lawyers use to limit their own malpractice exposure, and enlist the natural sympathies of judges who tend to be familiar with the *Model Rules* in the process?" (p. 23). Woodcock (2011) acknowledges that there will be times when a social worker should proceed somewhat differently from how a lawyer would

proceed in similar circumstances. Furthermore, the legal code might be completely wrong for social workers on a particular issue. In that event, social workers might have to invent their own rule above and beyond what already exists in the NASW Code.

The types of collaborative models outlined in this paper provide a blueprint upon which to build. The continued exploration of these issues should be embraced to ensure that interdisciplinary collaboration(s) can continue to flourish. The ultimate goal is to transition from the question "You want me to do what?" to "What pathway will I use to navigate through ethical tensions in order to enhance the clients' best interest and well-being?" Application of an ethical decision-making model in a law clinic setting should be encouraged. A concerted effort among those involved in interdisciplinary training may increase the probability of professionals' engaging in sound ethical practice irrespective of complex realities on the ground.

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Appendix
Confidential
FAMILY LAW CLINIC
POLICY AND PROCEDURE REGARDING
MANDATORY REPORTING OF CHILD ABUSE OR NEGLECT

Introduction

As a social work or psychology consultant to the Family Law Clinic (“the Clinic”), you are a member of the legal team¹ for each client. As such, you are required to follow the rules of the attorney-client privilege.² All communications between a lawyer and client are confidential. Client confidentiality is a fundamental and weighty professional obligation.

Attorneys, including guardians ad litem for children, are **not** mandated reporters of abuse and neglect Virginia.³ Social workers and psychologists are among the mandated reporters; when there has been reasonable cause to suspect that a child is abused or maltreated they are required to report to the statewide central register of child abuse and maltreatment. However, you, as a member of the legal team do **not** fall within the category of mandated reporters.

The legal team is **forbidden** from unilaterally overriding the attorney-client privilege to disclose suspicions of child abuse or neglectful acts that have **occurred in the past**.

Procedure for adult clients when there is reasonable cause to believe the client will commit immediate bodily harm to a child

If a member of the legal team believes that serious bodily harm to a child is about to be committed by a client, the team member must immediately contact Professor Margolin on her cellular phone and leave a message for her with the Clinic’s Coordinator.

The team members shall, after consultation with the Law Clinic Director, conduct further investigation as to the veracity of the information and whether the information has already been reported to child welfare authorities. The Law Clinic Director and the supervising social work and psychology professors will ultimately decide whether the matter is reported.

1 The “legal team” refers to Law Clinic Director; the Clinic’s law students, masters of social work students and professor supervisors, Ph.D. psychology students and professor supervisors; the Clinic’s Coordinator; and other professionals, working as staff or volunteers, on matters related to client representation at the Family Law Clinic.

2 The obligations of each member of the legal team were discussed and affirmed with Ethics Counsel at the Virginia State Bar.

3 Ann. Code § 63.2-1509

Appendix

Procedure for child clients when new abuse/neglect allegations come to light during an interview

In some cases, the Family Law Clinic will represent a child. As with adults, attorney-client privilege attaches to all communications between the child and the legal team. A lawyer representing a child is **not** obligated to report any new abuse or neglect charges that come to light during an interview with the child.

However, when the Clinic is representing a child and believes that it is in the child's interest to disclose the new information, the proper course is to discuss the matter with the child and attempt to obtain permission to speak to the authorities on the child's behalf. If the child does not consent, the legal team may not reveal the information.

If the child is clearly too young to make an important decision, and would be in danger if the information is not revealed, the team member must immediately contact the Law Clinic Director on her cellular phone and leave a message for her with the Clinic's Coordinator.

The team members shall, after consultation with the Law Clinic Director, conduct further investigation as to the veracity of the information and whether the information has already been reported to child welfare authorities. The Law Clinic Director and the supervising social work and psychology professors will ultimately decide whether the matter is reported.

Procedure for child clients when there is reason to believe that the child client will be the victim of imminent bodily harm

When the Clinic is representing a child and a team member believes that child client will be the victim of imminent bodily harm, the team member shall first attempt to obtain permission to speak to the authorities on the child's behalf. If the child does not consent or is clearly too young to make an important decision, the team member must immediately contact the Law Clinic Director on her cellular phone and leave a message for her with the Clinic's Coordinator.

The team members shall, after consultation with the Law Clinic Director, conduct further investigation as to the veracity of the information and whether the information has already been reported to child welfare authorities. The Law Clinic Director and the supervising social work and psychology professors will ultimately decide whether the matter is reported.

Law Clinic Director

Student

Professor (Social Work)

Date

Date