

Common Ethical Issues Representing Immigrant Children in Juvenile Court



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This handbook is meant to provide practical and useful information. It is not meant to act as a substitute for independent research or obtaining legal advice from an attorney. It is being made available with the understanding that neither Project Lifeline nor the author is engaged in rendering legal or ethical advice. If legal or ethical advice is required, seek the services of a competent lawyer.

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ABOUT PROJECT LIFELINE AND THE PREDICATE ORDER PROJECT

Project Lifeline is an innovative 501(c)(3) nonprofit organization which leverages its legal and medico-legal expertise and creates high impact collaborations that change the lives of immigrant children.

Special Immigrant Juvenile Status (SIJS) is a type of humanitarian protection which results in lawful permanent residence status for migrant children and youth who have been abandoned, abused, neglected or had similar harsh experiences recognized by state law and for whom reunification with one or both parents is not viable due to such experiences. It is the only lifeline for tens of thousands of eligible young people already in the United States, as every child who meets the qualifications is eligible for relief no matter how long ago they arrived.

There are hundreds of thousands of children who could benefit from SIJS if they had a lawyer. Advocates estimate that up to 90% of children arriving unaccompanied are eligible for SIJS or asylum.

SIJS is a hybrid process, bridging the family law expertise of the state and the immigration powers of the federal government. Simply stated, the process begins by obtaining a dependency order—called a predicate order—from a state “juvenile court” located where the child resides. This predicate order undergirds the SIJS petition which is filed with USCIS. Once the petition is approved and a visa is available under our restricted system, the child’s application for permanent residence can be filed either with U.S. Citizenship and Immigration Services (USCIS) or the immigration court.

An attorney must be barred in the state where the predicate order is sought. There are a scant number of attorneys who are aware of this need and are trained to do the work. [Project Lifeline](#)’s Predicate Order Project (POP) aims to increase the capacity of lawyers across bars to do predicate order work so that more children have a chance at a meaningful life in the United States. POP aims to identify, inspire, and educate lawyers to bring dependency actions that qualify children for SIJS.

To facilitate this goal, we created the [Predicate Order Resource Center](#). This library collects and curates material from diverse sources and houses it in a single repository. The resource center simplifies finding the law and best practices and serves as a guide to help lawyers do further research.

The Predicate Order Resource Center contains existing publications and web material as well as original material prepared for Project Lifeline, including this handbook.

PREFACE

This handbook is intended to highlight some of the unique ethical issues that arise in the context of representing immigrant children in juvenile courts, meaning any state court that handles matters involving custody, care and guardianship of minors.

The content of this handbook is divided into two sections. The first section provides a non-exhaustive list of some of the most commonly arising ethical issues when representing immigrant children in juvenile court. The list is divided by topic and references the rule or rules that practitioners can use as a starting point when considering how to address the issue in their own practice. The second section is a series of hypotheticals—with key questions and analysis of the relevant rules—that is intended to illustrate the rules that may apply to realistic scenarios that practitioners might encounter in their representation of young clients. A list of further resources is available [here](#).

Please note that this is not an exhaustive description of possible ethical issues a practitioner might encounter, and neither the list of issues, nor the hypotheticals and analysis, is intended as legal advice. Lawyers must always review the specific ethical rules in their particular jurisdiction to ensure compliance with the relevant rules. The issues and rules discussed in this handbook are based on the American Bar Association's Model Rules of Professional Conduct, not the rules of any specific jurisdiction. In addition, please note that this guidance was last updated in March 2022.

COMMON ETHICAL ISSUES FOR LAWYERS REPRESENTING IMMIGRANT CHILDREN IN JUVENILE COURT PROCEEDINGS

Competence – Rule 1.1

- Lawyers must engage in trauma informed advocacy that accounts for the trauma many immigrant children in juvenile court proceedings have experienced. There are excellent resources on this topic, some of which are in the [resources](#) section of this handbook.
- To ensure that they are competently representing their clients, lawyers for children in juvenile court must be aware of potential adverse consequences to their clients, or to members of their clients' families, of any findings made in juvenile court. This will often require consulting with immigration law experts.

Diligence – Rule 1.3

- Lawyers representing children in juvenile court must ensure they maintain awareness of all immigration-related deadlines, as well as developments in immigration law, and move their clients' cases forward consistent with those deadlines and the interests of their clients.

Scope of Representation – Rule 1.2

- Lawyers who are limiting the scope of their representation to one aspect of a client's case (e.g., only for the purpose of obtaining juvenile court findings) must ensure that the limitation is reasonable, and that the client has given informed consent, preferably confirmed in writing.

Diminished Capacity Clients – Rule 1.14

- Lawyers must be familiar with when and how they can take actions for young clients who cannot express a position on a legal matter.
- Lawyers must understand when it is appropriate to take protective action that contradicts a position expressed by a client.
- Lawyers must ensure they preserve confidentiality of information for young clients even as they take protective action.

Communication – Rule 1.4

- Lawyers should tailor their communications with young clients to use language and phrases that are most likely to be understood.
- Lawyers must be aware of the limitations of their communications with a young client’s family members who are not represented.

Confidentiality – Rule 1.6

- Layers who are representing clients pursuant to referrals from a non-profit must understand the limits on disclosing information to the referring agency.

Conflicts – Rules 1.7 and 1.8

- Lawyers must be aware of potential conflicts of interest where they are representing a child and a parent or guardian in the same or in different proceedings.
- Lawyers must be aware of potential conflicts of interest where a third party (including a parent or guardian) is paying the lawyer to represent the child.

Terminating Representation – Rule 1.16

- Lawyers must be aware of the situations under which representation of a young client can be terminated, and the requirements to terminate representation ethically.

Advising Clients Ethically – Rules 1.4 and 2.1

- Lawyers should understand the extent of their duty to ensure clients are fully informed of their options, and their duty to provide frank and independent counseling.

Meritorious Claims – Rule 3.1

- Lawyers should understand the duty to avoid frivolous claims.
- Lawyers should also be aware of what factors can ensure a case will be deemed meritorious, even where it goes against existing precedent or is likely to lose.

HYPOTHETICALS

Hypothetical A

You are the attorney for Daniela, a 15-year-old girl who came to this country from Honduras and was placed in deportation proceedings. Daniela was abandoned by her mother and physically abused by her father in her home country. She came here to escape the abuse and she is now living with William, a 25-year-old distant cousin who recently came to the United States. Only Daniela is your client; William is proceeding *pro se*.

You have met with Daniela twice to gather information and determine what forms of immigration relief she might pursue. Based on the information you receive, you suggest to Daniela that you file papers in juvenile court to have William appointed as her guardian, and to seek Special Immigrant Juvenile findings during the course of the guardianship proceedings. In this jurisdiction, Daniela is permitted to file a petition for someone to be appointed as her guardian. Daniela agrees with this plan.

At your next meeting, as you go over the guardianship papers with Daniela, she tells you that she's pregnant and William is the father. She says she and William are going to raise the baby together and will get married as soon as she is old enough. Daniela says that she still wants to go forward with the plan to have William appointed as her guardian in juvenile court and to seek SIJ findings.

Questions

1. *How should you respond to Daniela's disclosures and what are the bounds of your discussion with Daniela? Can you talk to her about the consequences of her decision for her safety, development, and future, or must you stick to the legal ramifications?*
2. *Suppose you counsel her against continuing to live with William, but she insists and tells you she still wants to pursue the guardianship. Must you do as she asks? What alternatives do you have?*
3. *When, if ever, would it be appropriate to seek the appointment of a "guardian ad litem"?*

Key Rules

Model Rule 2.1

You are not limited to the legal ramifications only when counseling a client. In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations, such as moral, economic, social and political facts, which may be relevant to the client's situation.

Model Rule 1.4(b)

Lawyers must assist their clients in making informed decisions. A lawyer must explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Model Rule 1.2(d)

A lawyer cannot assist a client in fraudulent or criminal conduct. A lawyer cannot counsel a client, or assist a client, in conduct the lawyer knows is criminal or fraudulent; but a lawyer may discuss the legal consequences of any proposed course of conduct with a client.

Model Rule 1.2(a)

A lawyer must abide by the client's decision regarding the objectives of the representation. A lawyer must consult with the client as to the means by which they are pursued.

Model Rule 3.1

A lawyer cannot bring or defend a case unless there is a non-frivolous basis in law and fact for doing so.

Model Rule 1.14

Even when a client's capacity to make adequately-considered decisions in connection with a representation is diminished, the lawyer is required to maintain a normal client-lawyer relationship with the client to the extent possible. However, if the lawyer reasonably believes that the client (1) has diminished capacity, (2) is at risk of substantial physical, financial or other harm unless action is taken, and (3) cannot adequately act in her own interest, the lawyer may take reasonably necessary protective

action. No set age determines capacity. Children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. Instead, lawyers should look at the developmental stage of the client, as well as the complexities and consequences of the decision being made, to assess the client's capacity. Where the client does lack capacity, and the three conditions above are met, the allowable "reasonably necessary protective action" includes consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian. **Even where such protective action is taken, a lawyer may reveal confidential information only to the extent reasonably necessary to protect the client's interests.**

Answers

This scenario presents challenging questions about the interplay of protecting a young client's interests and safety, and honoring that client's wishes. There are some jurisdictions that explicitly resolve this issue by statute or case law, stating that the role of the child's lawyer is to advocate for the child's best interests (and not the client's stated position), and others that create a presumption in favor of advocating for a client's stated goals. In most jurisdictions, however, the statutes and relevant ethical rules do not create a bright line for addressing a scenario like this one. The most important framework for the posed questions is to remember a lawyer's responsibilities to understand her client's position and the basis for it; to provide rigorous, developmentally-appropriate, and informed counseling to the client on the client's options; and to ensure that any position the lawyer takes on a case that is *not* consistent with the client's stated position adheres to the strict ethical guardrails of Model Rule 1.14 or rules of the relevant jurisdiction.

1. *How should you respond to Daniela's disclosures and what are the bounds of your discussion with Daniela? Can you talk to her about the consequences of her decision for her safety, development, and future, or must you stick to the legal ramifications?*

You have two important ethical duties regarding this question: (1) to gather sufficient information so that your counseling is appropriately informed, and (2) to provide through, independent counseling to your client on her options. Here, you must make

sure you fully understand the factual background, to the extent possible, *prior* to providing counseling. That will require you to ask additional questions to understand the nature, extent, and context of Daniela's relationship with her cousin, as well as any cultural aspects at play that might affect how Daniela is counseled. For example, there may be trafficking concerns that should be explored; or, because in many cultures it is quite common for a 15-year-old girl to be with an older man, those cultural differences must be recognized and considered. In discussing Daniela's options with her, you should examine these and a wide variety of other factors, including the reality of achieving her goal; the legality of the goal; and concerns about her safety and well-being.

2. *Suppose you counsel her against continuing to live with William, but she insists and tells you she still wants to pursue the guardianship. Must you do as she asks? What alternatives do you have?*

The default when dealing with a client that has diminished capacity due to age, or any other reason, is to treat them as one would any other client. That means advocating for any position the client seeks so long as: (1) it is one to which the client is legally entitled; (2) it is non-frivolous; and (3) there are not ethical issues, such as a conflict of interest or the lawyer's lack of substantive expertise, that prohibit advocating for the client's stated position. **[NOTE: Many jurisdictions have special rules for representing children, and it is imperative that you be aware of those rules and comply with them.]** In this situation, there are legitimate questions about the legality and frivolous nature of Daniela's request that will depend greatly on the particular statutory language at play. If it is, for example, clearly frivolous to have a boyfriend appointed as the guardian of his girlfriend under the statutory and common law of the jurisdiction, then you would not be permitted to advance the guardianship. Or, if the laws of the jurisdiction prohibit a sexual relationship between a 25-year-old and a 15-year-old, then advancing the guardianship might be considered so lacking in merit as to be deemed frivolous. In addition, if you felt that you could not advocate for Daniela's position, you would be permitted to withdraw from the representation, so long as the conditions of Rule 1.16 were complied with (see [Hypothetical F](#)).

3. *When, if ever, would it be appropriate to seek the appointment of a “guardian ad litem”?*

None of the considerations above mean that you would therefore be authorized to advocate a different position from the one stated by your client. In other words, the fact that you might not advocate *for* the guardianship does not necessarily mean you can advocate *against* the guardianship. While many jurisdictions do have statutes that enumerate the conditions that would allow this (typically where there is otherwise imminent risk of serious substantial harm), the relevant Model Rule (MR 1.14) does not explicitly allow it. So what are your options? One option, as discussed above, is to withdraw, if that can be done ethically. A second option, if specific conditions are met (see [Hypothetical C](#)), is to “consult with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, [seek] the appointment of a guardian ad litem, conservator or guardian.” Here, that might mean asking the court to appoint a guardian ad litem for the legal proceeding, or consulting with an in-house social worker at your firm.

Hypothetical B

Assume the same facts as [Hypothetical A](#), with the following additional information:

You practice in a jurisdiction where William's actions meet the definition of child abuse, and where he could be considered a respondent in a case brought in juvenile court. In addition, lawyers representing minors in your jurisdiction are required by statute to act as mandatory reporters to Child Protection Services (CPS).

Questions

What information about Daniela's situation, if any, must you reveal to CPS? What information can you reveal to CPS? How would your answer change if you were not a mandated reporter according to state law?

Key Rule

Model Rule 1.6

Lawyers are not permitted to reveal information relating to the representation of a client. This includes information covered by attorney-client privilege and the work-product doctrine, information about the case that comes from any source (not just the client), and information that could reasonably lead to the discovery of protected information by a third person.

This is a broad mandate, but there are exceptions. A lawyer may disclose confidential information if the client has given informed consent for its disclosure, and a lawyer may also disclose information if there is implied authorization from the client to do so in order to carry out the representation. Implied authorization includes situations where a fact cannot properly be disputed, or where disclosure helps facilitate a satisfactory resolution to a matter.

Even if there is no actual or implied consent, a lawyer is permitted (but *not* required, under Rule 1.6) to reveal confidential information to the extent the lawyer reasonably believes necessary if certain very specific conditions exist. For example, a lawyer may reveal confidential information to the extent reasonably necessary to prevent reasonably certain death or substantial bodily harm, or to comply with another law or court order. Whether or not a specific rule or law supersedes the confidentiality rule and requires disclosure will depend on the wording of that particular law.

Importantly, prior to any disclosure not authorized or impliedly authorized by the client, the lawyer must discuss the matter with the client.

Answer

What information about Daniela's situation, if any, must you reveal to CPS? What information can you reveal to CPS? How would your answer change if you are not a mandated reporter according to state law?

The confidentiality rules apply with any client, regardless of the client's age or capacity. Indeed, special reminders about protecting confidential information are included in most rules that relate to clients with diminished capacity. Here, the exception that allows a lawyer to disclose information to comply with another law or rule would permit you to disclose information to CPS, **but only to the extent reasonably necessary to comply with that law**. Whether or not you **must** disclose that information will depend on how the mandatory reporting statute is worded.

Mandatory reporting statutes vary by state. Each state has their own mandatory reporting requirements, and only some include lawyers among mandatory reporters. The following is a helpful resource and provides a summary of the mandatory reporter provisions of every state: <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/manda/>. When representing children, you should familiarize yourself with the mandatory reporting requirements for your state, including: whether you are a mandatory reporter when acting as the attorney for the child; when information must be reported; how to make a report (usually there is a hotline you will call to make a report); and what the required timeframe is for making a report (for example: within 48 hours of the incident).

If you do call in a report, you must answer in good faith; however, if you don't know the information, you can't be required to report it. And, as noted above, you are only permitted to provide information to the extent reasonably necessary to comply with the mandatory reporting law. That information typically includes:

- Demographics of child – Name, date of birth, sex, race;
 - Location of child – Address and phone number of the facility or agency responsible for providing child's care;
 - Demographics of alleged perpetrator – Age, name, race, relationship to child;
-

- Nature and extent of alleged abuse – Type, severity, location of injury, pattern of abuse, physical evidence of injury;
- Special considerations for child – Such as language or developmental needs.

If you are not a mandatory reporter, you are only permitted to disclose information if it meets one of the other exceptions. Here, the situation could possibly meet the conditions of Rule 1.6(b)(1), which allows a lawyer to reveal information to the extent reasonably necessary to prevent reasonably certain death or serious physical injury. More information would be required to determine if Daniela's situation met those criteria. Again, note that the permissive or mandatory nature of this rule varies from state to state, so you must check your own jurisdiction.

Hypothetical C

You represent Sara, a 12-year-old girl from Honduras with severe developmental delays. Sara is in removal proceedings. You are representing her in a custody case in juvenile court in the hope of obtaining predicate findings that could assist her in obtaining SIJS. Sara's aunt is the petitioner in the custody case. Sara has been assessed as having the developmental capacity of a 4-year-old child. When you ask Sara who she wants to live with, she tells you clearly that she wants to live with her adult sister. But when you ask Sara whether she wants to return to Honduras, her country of origin, she says "no" and becomes visibly upset. Sara cannot tell you anything more about what she wants or why. When you try to counsel Sara about your plans for her legal case, it is clear that she does not understand what you are saying. You learn from Sara's aunt that Sara's mother is deceased, and Sara grew up in Honduras with her father, who remarried. Sara's stepmother was extremely abusive to Sara. In addition, Sara suffered other abuse because of her disability. You also learn that Sara's adult sister lives in Honduras. Based on the facts you learn from Sara's aunt, you want to move forward with representing Sara. However, you are concerned because (1) Sara seems to have conflicting positions regarding where she wants to live, and (2) Sara does not have the capacity to understand her case.

Question

How can you effectively and ethically represent Sara despite her diminished capacity?

Key Rule

Model Rule 1.14

When a client's capacity to make adequately considered decisions in connection with a representation is diminished, the lawyer is required to maintain a normal client-lawyer relationship with the client to the extent possible. This includes allowing the client to determine the goals of the representation. However, if the lawyer reasonably believes that the client (1) has diminished capacity, (2) is at risk of substantial physical, financial or other harm unless action is taken, and (3) cannot adequately act in her own interest, the lawyer may take reasonably necessary protective action. "Reasonably necessary protective action" includes consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian.

Answer

The most important approach to take when working with a client with diminished capacity like Sara is to treat them like any other client to the extent possible. For Sara, that means diligently gathering information about her legal options; engaging in rigorous fact investigation to understand her history, and the advantages and disadvantages to her various possible custodial placements; communicating and advising Sara at a developmentally-appropriate level; keeping case-related information confidential unless an exception is met; and advocating zealously for her goals. If, however, Sara continues to be unable to express or indicate in any way a clear custodial preference, then you can take certain measures to ascertain what position to advocate. This could include consulting with people who know Sara (such as her aunt, sister, or other family members), or individuals with special expertise (such as a social worker or other similar professional) to assess what would be the best option for Sara. If appropriate in your jurisdiction, you could also seek the appointment of a Guardian ad Litem to determine Sara's best interests, and then advocate for that position.

Throughout the representation, you are required to do everything possible to help Sara express a position on the case, and also to continue to check back to see if her capacity to express a position has changed.

Hypothetical D

You are representing Michael, a 12-year-old boy from Haiti who was mistreated by his father in his home country. Michael lives with his mother. You represent both Michael and his mother in removal proceedings in immigration court. When you file the juvenile court paperwork to initiate proceedings to obtain findings to support SIJS, you give your appearance as the attorney for both Michael and his mother.

Question

Is your representation of both Michael and his mother permitted in juvenile court? In immigration court?

Key Rule

Model Rule 1.7

Defining conflicts: When does a concurrent conflict of interest exist?

A lawyer may not be able to represent two clients at the same time where there is a concurrent conflict of interest. A concurrent conflict of interest exists if either: (1) the representation of one client will be directly adverse to another client, or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

A representation is "directly adverse" where the clients are represented in the same matter, and also where the lawyer's loyalty to one or both clients is reasonably likely to be questioned by either of the clients. Examples include where a lawyer advocates against a person in one matter, but represents that person in another matter, even if wholly unrelated; or where a lawyer is required to cross-examine a witness in one matter, where the lawyer represents that witness in another matter.

A "significant risk" that the representation will be "materially limited" occurs, for example, where the lawyer's independent professional judgment in giving advice and considering options is likely to be limited by the other representation.

Under what circumstances may an attorney proceed with representation in spite of the existence of a conflict of interest?

Even if there is a conflict of interest, a lawyer may represent a client if: (1) the lawyer reasonably believes that she will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or another proceeding; and (4) each affected client gives informed consent, confirmed in writing.

What are the considerations when considering whether to represent two individuals in the same matter?

In assessing whether it is appropriate to engage in common representation of two individuals in the same matter, the lawyer should consider that each client has the right to be informed of anything bearing on the representation that affects that client's interests, even if it was something said in confidence by the other client, because the attorney-client privilege ordinarily does not attach with regard to common clients. Each client should provide informed consent to the arrangement.

Ensuring that consent to a conflict is valid: What is "informed consent"?

Informed consent requires that the lawyer communicate information to the client about the risks of the proposed course of conduct, and inform the client of the reasonably available alternatives to the conduct.

Answer

At this point, it appears that the interests and goals of Michael and his mother are sufficiently aligned such that there is no obvious conflict. That, however, is not your only consideration—you must also ask whether there is a significant risk that the representation of either Michael or his mother will be materially limited by your ethical duties to the other. For example, perhaps Michael's mother does not want negative things said about Michael's father, since it could possibly impact the father's ability to one day immigrate to the U.S.; but, in order to fully advise Michael, you would clearly need to explain the option of obtaining SIJ status, including how that would involve a detailed description of how his father mistreated him. Indeed, if that is his best option

for obtaining lawful permanent residence, you would have to tell him that, clearly not something his mother, in this scenario, would want you to do.

Therefore, to answer the conflict question here, you will need to know more about a number of things, including the loyalty of each client to Michael's father, the desire of each client to return to Haiti versus staying in the U.S., and the nature of their relationship with each other. If there is any indication of a significant risk that you might have to advise one client in a manner that would be inconsistent with the other client's goals, then a conflict exists.

Where a conflict or significant risk of conflict exists, obtaining informed consent to the co-representation is an option, so long as there is no court rule or law against it (and, of course, in many family courts, co-representation of a guardian and child is explicitly not permitted). Another option is to only represent either Michael or his mother, and refer the other for alternate counsel. While this option is the least likely to lead to conflicts, it does have potential practical problems if alternate counsel is not available, or not affordable.

Finally, where one of the co-represented clients is not capable of providing informed consent, co-representation will only be possible if the appropriate steps for representing a client with diminished capacity are followed. (See [Hypothetical C.](#))

Hypothetical E

You are representing Amelie, a 16-year-old girl seeking SIJS. Amelie's claim that she cannot reunify with her father is based on domestic violence suffered at the hands of her father, Jairo. No father is listed on Amelie's birth certificate. The child's declaration in support of findings in juvenile court provides detailed information about the abuse she suffered. After filing the application for findings, you conduct a hearing where you take testimony from Amelie. After the hearing, Amelie's aunt informs you that "Jairo" is actually Amelie's uncle, not her father, but Amelie doesn't know that.

Question

Do you have a duty to disclose this information to the juvenile court?

Key Rule

Model Rule 3.3

A lawyer cannot knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer. Although a lawyer cannot ignore an obvious falsehood, doubts about the veracity of testimony or other evidence should be resolved in favor of the client.

If a lawyer, the lawyer's client, or a witness called by the lawyer, offers *material* evidence and the lawyer knows it is false, she must take reasonable remedial measures.

A material fact is a fact needed to prove a case, or tending to establish a point that is crucial to a person's position, or otherwise important or significant to the case.

Reasonable remedial measures include seeking the client's cooperation in correcting the false statements, withdrawing from representation, and, if necessary, disclosure to the tribunal.

The prohibition against offering false evidence only applies if the lawyer *knows* that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances.

Answer

You have presented evidence to a tribunal, via the declaration and possibly via testimony, that now seems to be false. Before deciding what to do, you need to assess whether or not you *know* that the evidence presented is false, and whether or not it is material. Here, it is certainly possible that the information from the aunt (rather than the information in Amelie's declaration) is not true; additional investigation would be required to see what level of knowledge you have about the falsity of the evidence presented. Are you required to do additional investigation where you suspect evidence is false? In transactional representation, yes; it is less clear whether that is required in the litigation context, and you would have to closely look at the law and relevant decisions and opinions in your jurisdiction.

Assuming that you know the declaration is false (for example, Amelie also admits that Jairo is not her father), then you must determine whether the false information is material. Here, since non-viability of reunification must be shown with a *parent*, the information is material.

Finally, if you know the evidence presented is false, and it is material, what remedial measures are appropriate? The best way forward would be to have Amelie present an updated declaration and testimony, explaining that Jairo is not the father. In fact, there might even still be a basis for non-viability of reunification with the actual biological father if he has never been involved in Amelie's life.

Hypothetical F

You are representing Jaime, a 15-year-old boy who has a strong SIJS claim. You have a hearing scheduled in juvenile court and you call Jaime to speak to him in advance of the hearing. Jaime tells you that he won't go to court because he's afraid the judge will call ICE to have him deported. You do your best to convince him to come, and explain that this is juvenile court and not immigration court, but Jaime doesn't show up to court.

Question

At the hearing date, can you tell the judge you are withdrawing from the case?

Key Rules

Model Rule 1.3

A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and act with commitment and dedication to the interests of the client.

Model Rule 1.16

A lawyer *may* withdraw from representing a client if (1) withdrawal can be accomplished without material adverse effect on the interests of the client; (2) the client fails meet an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is met; (3) the representation has been rendered unreasonably difficult by the client; or (4), there is other good cause. (*Note there are other grounds for withdrawal listed in 1.16(b) that are not relevant to this particular scenario*).

To withdraw from representation ethically, a lawyer must get the permission of the tribunal, if the applicable law requires it, and has to take all reasonably practicable measures to protect the interests of the client, *including giving reasonable notice to the client*, and giving the client time to find alternate counsel.

Answer

In this case, it is too soon to withdraw. While non-cooperation by a client is a legitimate basis to withdraw from representation — especially if that is a condition of representation that is laid out in the retainer — more diligence to find and convince the

client to appear is required. Equally important, you must make sure that you give sufficient notice to Jaime that continued non-cooperation will lead to your withdrawal as his lawyer. Those notices should be in writing to ensure both you and Jaime are protected. The best course of action here is to ask for an adjournment, make additional attempts to convince Jaime to cooperate, and provide a series of notices that termination of representation will result from on-going lack of cooperation.

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Theo Liebmann—who serves on the Advisory Board for Project Lifeline’s Predicate Order Project—is a Clinical Professor of Law at Hofstra University School of Law, where he teaches ethics and clinical courses. He serves as the Executive Director of the Freedman Institute for the Study of Legal Ethics, and has directed the **Youth Advocacy Clinic** since its inception. His advocacy and scholarship focus primarily on issues related to immigration, ethics, and the representation of children and youth. Professor Liebmann and his students have represented hundreds of immigrant children in family and appellate courts, as well as in immigration proceedings and removal cases in federal immigration courts.

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RESOURCES

ABA Model Rules of Professional Conduct

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/

ABA Jurisdictional Rules Comparison Charts

https://www.americanbar.org/groups/professional_responsibility/policy/rule_charts/

ABA Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States

https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/standards_for_children_2018.pdf

ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings

https://www.americanbar.org/content/dam/aba/administrative/child_law/aba_model_act_2011.pdf

Advocating for Very Young Children in Dependency Proceedings: The Hallmarks of Effective, Ethical Representation

https://www.americanbar.org/content/dam/aba/administrative/child_law/ethical_rep.pdf

AILA Ethics Compendium

<https://www.aila.org/practice/ethics/compendium>

(available to AILA members only)

AILA Practice Advisory on Ethical Issues in Representing Children in Immigration Proceedings

<https://www.aila.org/practice/ethics/ethics-resources/2012-2015/ethical-issues-representing-children>

(available to AILA members only)
