

**DOMESTIC RELATIONS AD LITEM**  
**ETHICS SCENARIOS FOR CHILDREN IN THE COURTS – MAY 2017**  
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**1. DUELING SETS OF GRANDPARNTS IN A GUARDIANSHIP CASE**

**FACTS:** Grandma #1 has a serious personality disorder that manifests in ways that are detrimental to your client and you are absolutely convinced she should not have custody although the proof may be difficult. Grandpa #1 (her husband) and the other set of grandparents are all appropriate and you believe would be good caretakers and legal custodians. This case seems to be one that will pose a very easy decision for you as AAL. Then Grandpa #2 tells you that he wants to be honest and upfront about everything and wants you to know that he smokes marijuana and has for several years. He says he smokes about once per week and his wife does not partake but knows about it.

**QUESTIONS FOR DISCUSSION:**

- A. Do you have any obligation to reveal this information to the attorney for Grandma #1 and Grandpa #1 (the other grandparents)
- B. To Grandpa #2's attorney? (He tells you he has told no one else, including his attorney.)
- C. To the Court?
- D. To the opposing counsel if they specifically ask you the bases of your recommendation?
- E. To the Court if they specifically ask you the bases of your recommendation?
- F. To Grandpa #2's wife, if he had told you she knew nothing about it?
- G. Would your answers be different if Grandpa's disclosure involved two past DWI charges 15 years ago that the other side had not discovered? What is they were 2 years ago?

**FACTS:** A parent sends you an email or a document you believe is very relevant to custody issues. You have good reason to believe neither counsel has a copy. When do you disclose, and to whom? What if counsel never asks you for documents you intend to introduce at trial?

At what point are we okay with substituting **our** judgment as to who gets to have which information versus letting the adversarial process work?

**POSSIBLE RULES OF PROFESSIONAL CONDUCT:**

RULES NO. 1.2(d), RULE NO. 1.6, RULE NO. 3.3, RULE NO. 3.4, RULE 4.1

**2. THE STEALTH RECORDER:**

You are meeting with the father involved in a divorce custody case and he tells you that because the therapist doing family therapy with him and his children seems to be biased toward his ex-wife, he has begun secretly taping the sessions.

QUESTION:

Who do you tell?

- a. No one
- b. His attorney
- c. Both attorneys
- d. The therapist
- e. The court

He wants to play the recording for you so you can see for yourself how biased the therapist is. Do you list to it? What do you do with it or tell him to do with the recording?

**POSSIBLE RULES OF PROFESSIONAL CONDUCT:**

RULE NO. 1.6, RULE NO. 4.4.

**3. TO INFINITY AND BEYOND: THE PERPETUAL AD LITEM**

FACTS: Judge makes a final ruling at trial and orders that you remain the children's AAL, and asks that it be put in the final order that children may contact you. One child has serious mental health issues. One parent calls a lot because attorney won't return his calls (case is closed). How long does your duty to serve as AAL extend? Do you ask to be relieved of your duty to serve as AAL? If so, when?

**POSSIBLE RULES OF PROFESSIONAL CONDUCT:**

RULE NO. 1.3, 1.14, ADMN. ORDER NO. 15.

#### **4. SCOPE OF THE AAL ROLE**

Should we be involved in child support issues, general financial issues of the parties in a divorce case, etc.? What to do if opposing counsel takes the position you do not have a role in one of those issues and you think you do? How to do that if you think you need to and still comply with the requirement of minimizing expenses to the parties per the Admin. Order?

**FACT SCENARIO:** After a heavily contested 3-day hearing, the Judge made a number of orders regarding division of assets and property. The father has not complied and the mother, who has custody, has received no money and can't access any of the accounts or assets because they were all solely in Husband's name. She has now received a notice of foreclosure on the marital home, which was awarded to her in the divorce and which has been the children's home their entire lives. Do you file a motion? Join a motion filed by mom's attorney? Stay out of it?

Would the answer be different if the noncustodial parent had paid absolutely no child support in the 6 months since the divorce decree? (Assume you are still involved because there is a gradual transition visitation plan and the court is setting periodic hearings to address visitation.)

#### **POSSIBLE RULES OF PROFESSIONAL CONDUCT:**

RULE NO. 1.2, RULE NO. 1.3, ADMIN. ORDER NO. 15.

## **5. THE LAZY OPPOSING COUNSEL**

How do you handle a situation where one of the attorneys is incompetent or lazy or just didn't do the necessary work to prove the case? Have you ever found yourself doing the majority of the work to meet one parent's burden of proof in a case because the incompetent attorney represented the parent you believed should get custody? Any ideas on ways to ameliorate this situation?

### **POSSIBLE RULES OF PROFESSIONAL CONDUCT:**

RULE NO. 1.1, RULE NO. 1.3.

## **6. LAST MINUTE CHANGE IN RECOMMENDATION**

At their request, you have informed both parents' attorneys of what you believe your recommendation will be in an upcoming custody hearing, absent any major developments at trial or new evidence of which you were not previously aware. On the eve of trial, you get some new information that changes your recommendation entirely. Do you call the attorneys and advise them? Is there a difference based on whether you got the information from an outside source or one of the attorneys? If the information came from one of the attorneys and you feel sure the other side is not aware of this information (or at least the attorney isn't aware – not sure about client )? What if your recommendation is going to be for the other parent and you do not want the opposing counsel to have time to prepare for this new evidence?

Where do you draw the line between trial strategy and advantage in court versus fundamental fairness to your opposing counsel(s)?

### **POSSIBLE RULES OF PROFESSIONAL CONDUCT:**

RULE NO. 1.6, RULE NO. 3.4, ADMIN. ORDER NO. 15.

**7. PRO SE PROBLEMS**

Concerns that arise when one (or both) parties are pro se.

One parent is pro se and has no idea what they are doing regarding preparing proof for the hearing. If they are the parent you believe should get custody, do you help them with subpoenas, procedural issues, etc. and offer no help if they are not the parent you plan to recommend? What if both are pro se?

**POSSIBLE RULES OF PROFESSIONAL CONDUCT:**

RULE NO. 4.2, RULE NO. 4.3.

**8. SCHOOL PERSONNEL NOT HELPFUL**

What to do if a school principal or administrator tells you they "don't allow" attorneys (even AALs representing the children) to talk to the kids at school or to talk to the teachers?

**POSSIBLE RULES OF PROFESSIONAL CONDUCT:**

RULE NO. 1.3., ADMIN. ORDER NO. 15.