

IV. THE ROLE AND DUTIES OF LEGAL COUNSEL

Chapter 27: Agency Attorneys and Caseworkers: Working Well Together*

by *Mimi Laver*¹

§ 27.1 Introduction

How often have you heard:

Agency Attorney:

"Those social workers are so 'touchy/feely' they can't give the judge concrete facts?" or "The workers are always 'in the field,' where is that!?"

Child Welfare Agency Caseworker:

"Our agency attorneys are so arrogant and emotionally distant . . . ?" and
"The attorneys care more about winning the case than about the kids?"

Attorney and Caseworker:

"They never return my call?" or "They just don't understand what I do . . . ?"

* This chapter was adapted from MIMI LAVER, FOUNDATIONS FOR SUCCESS: STRENGTHENING YOUR AGENCY ATTORNEY OFFICE (American Bar Association 1999):

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Nonsubstantive changes were made to the text and formatting to reflect the style of this publication. Section numbers have also been added to reflect the style of this publication.

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As an agency attorney representing the Department of Human Services in Philadelphia, I often heard these kinds of comments. At times I felt like a cruise director: trying to keep caseworkers and attorneys happy by coordinating their activities and helping them work together better. Sometimes, "cheerleading" about working as a team would improve life, but usually just for a little while. What we needed was some real effort and communication to improve our relationships.

If you also hear these gripes in the halls of your office, read on for a "beyond cheerleading" discussion of ways to ease the tensions in attorney-caseworker relationships and to form positive working teams. There's more to it than saying, "Let's all be friends . . ."

§ 27.2 Roles of Attorneys and Social Workers

§ 27.2.1 Defining the Client

As an agency attorney, it is important that you identify who your client is. Many conflicts between attorneys and social workers stem from a misunderstanding of who the attorney represents. The models of agency representation vary by jurisdiction and should be defined by your state's law. Attorneys may be employed by local prosecutor's offices, state attorney general offices, local civil litigation offices, or the agency itself. Additionally, some agencies hire special prosecutors or contract attorneys.² If you are uncertain what your state legislation dictates, your state attorney general or comparable office should be able to advise.

Within each model, the view of who the client is differs. Some attorneys represent the agency as an entity, relying on the caseworker's opinions, but keeping the interests of the agency in mind at all times, and some, as in the prosecutor model, represent the "people." Each has its strengths and weaknesses.

If you represent the agency as an entity, as I did in my previous practice, there are two considerations. Sometimes the caseworkers feel the attorneys disregard their wishes, and do not represent them aggressively in court. What happens is the agency attorneys try to be mindful of agency policy, while listening to the individual caseworker's viewpoint. Sometimes the interests of the agency differ from those of individual caseworkers. Because the attorney represents the agency, not individual caseworkers, the attorney must defer to the agency.

The other concern is that if caseworkers make serious errors that conflict with agency policy and a contempt proceeding is held, the caseworkers' union attorney has to represent the caseworker, while the agency attorney represents the agency. In my experience, the benefits of this model outweighed the problems. We were able to

² Donald N. Duquette, *Lawyers' Roles in Child Protection*, in *THE BATTERED CHILD* (Mary Edna Helfer et al. eds., 5th ed. 1997); Henry J. Plum, *Legal Representation of Agencies Presentation Outline*, June 15-17, 1998.

consistently represent agency policy while advocating for the caseworkers' positions in court.

Several concerns about the prosecutor model make this method of representation particularly problematic. Often, the attorneys in these offices are new and choose to work in the prosecutor's office to practice criminal law. They rotate out of dependency cases quickly, and therefore never get proper training. As a result, the caseworkers often feel the representation is inadequate. Additionally, with this method the attorneys generally get the final word on whether a petition should be filed. This leaves the caseworker feeling as if his or her professional opinion is not considered. They may also fear that with attorneys making decisions about the caseworkers' clients, best social work practice will be ignored. The National Association of Social Workers (NASW) *Standards for Social Work Practice* in child protection set out: "The initiation of court action is an agency team decision requiring legal counsel and legal representation."³ In the prosecutor model of representation, the collaborative decision-making process can get lost and can cause tension between you and the caseworker.

No matter which model your jurisdiction uses, it is important for you to identify the relationship with your client.⁴ Further, it is important for your client to understand the scope of your representation.

§ 27.2.2 Remember Your Obligations

No matter who your client is, there are certain ethical obligations you have in your practice. You may need to communicate these rules to the caseworker from time to time. Your primary responsibility is as follows: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."⁵ Further, "[i]n 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 factors, which may be relevant to the client's situation."⁶ As an agency attorney, you will often be asked to act as an advisor. You must provide the best counsel possible and then allow your client to reach a decision.

Often, attorneys worry that if the caseworkers are making major decisions about a case, the attorneys will be forced to do something unethical. If you and the caseworker or supervisor disagree about a decision, you have an obligation to try to work out a solution that is comfortable for you and the client. You are bound by the

³ NASW STANDARDS FOR SOCIAL WORK PRACTICE IN CHILD PROTECTION, Standard 21 (NASW 1997).

⁴ See MODEL RULES OF PROF'L CONDUCT R. 1.13 and cmt. (2009) ("A lawyer employed or retained by an organization [including a governmental organization] represents the organization acting through its duly authorized constituents.").

⁵ MODEL RULES OF PROF'L CONDUCT R. 1.1.

⁶ MODEL RULES OF PROF'L CONDUCT R. 2.1.

Model Rules of Professional Conduct, however, and may not act in an unethical manner. Generally, if you and your client discuss the matter, you will be able to reach a mutually acceptable outcome.

§ 27.2.3 Define Responsibilities

Decide which tasks you should handle and which should be handled by the caseworker. Decide what jobs should be shared. Deciding who has what responsibilities and sticking with it often causes tension in the attorney-caseworker relationship. Deciding together can make your team operate more smoothly.

Use the list of responsibilities in Section 27.8 when deciding who should handle various duties. Your needs may be different, and you may have additional tasks that should be considered when you and the caseworkers divide the workload.

You and the caseworkers should make your own list of jobs and openly discuss who should have primary responsibility for each. Consider creating protocols for some of the ongoing responsibilities you share. With the written protocol for termination petitions, for example, you, your staff, and the caseworker will have guidance about what jobs you must each complete and timeframes for completion.

§ 27.2.4 Decide Who Calls the Shots

Once you have defined your responsibilities, you and the caseworkers need to decide who makes the decisions. Some will be fairly obvious. For example, if an issue clearly involves a legal strategy, you get to make the final decision.⁷ Similarly, if the question concerns social work or family specific treatment, the caseworker, on behalf of the agency, calls the shots. Most questions though, are not so clearly defined. Your strong communication and teamwork will be needed to discuss the issue with the caseworker and try to resolve the issue in a manner that satisfies both of your goals.

Additionally, you will need to keep in mind the answer to the "who is my client?" question. Generally, your client will be the agency and not the caseworker. You and the agency administration should have a system in place to resolve conflicts between you and individual caseworkers. Sometimes just having a calm conversation with the caseworker and both of your supervisors can help. Sometimes the issue has systemic impact, and the head of the agency needs to make the decision. If a dispute resolution system is implemented before a major conflict, none of the players will be offended if the system is used.⁸ There are times when you will need to talk with the caseworker's supervisor for clarification. This should not be viewed as "tattling" on the caseworker, but as part of the process to improve and expand the team.

⁷ See MODEL RULES OF PROF'L CONDUCT R. 1.2 and cmt.

⁸ Donald N. Duquette, *Lawyers' Roles in Child Protection*, in *THE BATTERED CHILD*, 471-72 (Mary Edna Helfer et al. eds., 5th ed. 1997). See also Gene D. Skarin, *The Role of the Child Protective Agency's Attorney in Family Court*, 171 *PLI/CRIM* 431, 440-41 (1995).

§ 27.2.5 Think About Roles During Non-Adversarial Case Resolution

Many jurisdictions have or are working on implementing some form of non-adversarial case resolution such as mediation or family group decision-making into their systems. While these practices have proven effective in empowering families, helping them feel more engaged in the case, and improving permanency outcomes, changing the way a system operates is difficult. Many child welfare professionals, agency attorneys and caseworkers included, are hesitant to move away from a traditional adversarial system. In the video "Pathways to Permanency: Dependency Mediation" "an agency attorney admits she was skeptical when mediation was first introduced in her jurisdiction: 'It was something that was very new. I think as lawyers there's always a sense and fear that you're going to lose some control—that is something you work very hard to have in a trial process to make the case go the way you want it to.'" During the video, and in jurisdictions around the country, professionals have found the positives for families, and the court system overall, become more important than the initial concerns.

For the agency attorney, caseworker, and agency director, the implementation of a new practice provides an excellent time to work together to identify each person's role and the overarching values the agency has about families and how to best work with them. As a group you can decide what your responsibilities will be during the non-adversarial case resolution. You and the other stakeholders should think through some of these questions while setting up your system:

- Will you and the other attorneys be in the room?
- Will you play a role in leading the session?
- Will you and the caseworker have time to confer during the session?
- If you and the caseworker are not satisfied with the outcome, what will happen?

Even if you and the agency are nervous about moving away from a traditional adversarial system, as you think about the outcomes you want for your children and their families, you may realize this new way of doing business will serve everyone's needs most effectively. Work with the agency, court, other attorneys and families to craft a system that works well for all of you.

§ 27.3 Need for Collaboration

As an agency attorney, you need good relationships with child welfare agency caseworkers to best serve children in the system. When you and the workers are busy complaining, your ability to work as a team and handle cases effectively and

©Claire Sandt, *You Want Me to . . . Mediate!?*, 20 CHILD L. PRAC. 42 (2001).

efficiently suffers. As a result, your cases may not be prepared thoroughly for court, your frustration about your job may increase, and the children on your caseload may remain in foster care longer than they should.

There are several characteristics of a strong working relationship: communication, mutual respect, trust, and teamwork.

§ 27.3.1 Communication

Open communication is a basic element of any good relationship. It is no different when working with caseworkers. Communicating effectively requires returning phone calls promptly, asking questions, addressing differences of opinion, and making time to talk about cases. Caseworkers should expect this of you and you of them.

Work with the caseworkers to devise a workable communication system. Do you all have e-mail, and are you using it? Is this a way to communicate that would save time and be reliable? Do you have an inter-office mail system? Are there mutually agreed upon times that you could be available to answer questions? Explore what, if any, complaints you each have about availability and level of communication, and then, together, find ways to improve. When you are all communicating, there is less likelihood that you will arrive in court not knowing what the caseworker's position is or what needs to be done for the child.

§ 27.3.2 Mutual Respect

Attorneys and caseworkers are both professionals with specific areas of expertise. You both have particular tasks to perform on all cases and are essential to a positive outcome in the case. Often, attorneys and caseworkers express that members of the other profession do not value their opinions and do not treat them courteously. When there is a lack of respect, incorrect assumptions about the other group emerge and add to negative feelings. It is essential that you each learn about the other's backgrounds and job responsibilities. With greater understanding of each other, an increased respect will grow.

§ 27.3.3 Trust

In addition to respect, you and the caseworkers need to trust each other. If you are a new attorney, it can be difficult to gain the trust of the caseworkers. The caseworkers may believe you do not know the answers to questions or are too new to advocate aggressively on their behalf. If you consistently provide good advice and perform well in court, the caseworkers will develop trust.

If you are an experienced attorney and have gained the caseworker's trust, keeping it requires that you are consistent and honest. When a trusting relationship exists, the caseworkers are more likely to call you with questions rather than acting first and then asking. Similarly, when you trust the caseworkers, you will have greater confidence in the cases you present in court.

§ 27.3.4 Teamwork

Out of the communication, respect, and trust comes a sense of teamwork.¹⁰ When you and the caseworker know what the other person has been doing on a case, know what the other person thinks about the case, and value the other person's viewpoint, the case will be its strongest, and the child will benefit. Even if you and the caseworker do not agree about parts of the case, as a team you will be able to reach a mutually satisfactory decision. If you are functioning as a team, your representation will be its best, and the caseworker's efforts for the family will be most effective.

§ 27.4 Strengthening the Relationship

To improve the attorney-caseworker relationship, you need to talk and have more contact with each other. You and the caseworkers are probably overloaded in managing your day-to-day work, and the idea of trainings or group discussions may not be a pleasant one. However, taking time now will help improve the team for the long-term.

§ 27.4.1 Informal Sessions

Find Shared Beliefs

Meet with caseworkers and agency administrators to eliminate existing barriers and identify common goals. You will probably all realize that you share the ideal of improving the lives of children, parents, and families in your community, and working through your differences may become easier with this understanding.

The NASW Standards for Social Work Practice in Child Protection delineate specific values that are central to improving the child welfare system and the lives of children and families. These include:

- Recognizing the dignity of the child.
- Commitment to the child's family.
- Promoting permanent and consistent care for children.
- Recognizing people's capacity to change.¹¹

Child welfare attorneys generally share these ideals and the caseworkers need to know that.

Facilitate in Comfort

Ask a neutral person with experience controlling discussions to facilitate a series of sessions that allow participants to express concerns and work towards concrete

¹⁰ See Janet Weinstein, *And Never the Twain Shall Meet: The Best Interests of Children and the Adversary System*, 52 U. MIAMI L. REV. 79, 159 (Oct. 1997).

¹¹ NASW STANDARDS FOR SOCIAL WORK PRACTICE IN CHILD PROTECTION, Standard 2 and cmt.

remedies. If you do not have a person in your department with this kind of experience, consider contacting your local university's marketing department for referrals. Meet in a comfortable room. You and the caseworkers can alternate as hosts if your offices are not in the same place.

Be Concrete

These discussions may start as gripe-and-complaint sessions, but sometimes it is necessary for people to express their frustrations before being able to form positive resolutions. If complaining is permitted, the facilitator should set ground rules. For instance, names should not be used to bad mouth one another.

As an example of the need to be concrete, I remember an experience when I was an attorney in Philadelphia. The caseworkers and attorneys in my office attempted to have some sessions focused on improving our relationships. The attorneys often found them frustrating because there was too much talking with too few concrete results. While we cared how the caseworkers felt about us and the court process, we were more interested in trying to "fix" the problems right away. Needless to say, we were unable to do so without also talking about our view of the system and really listening to what the caseworkers were sharing. Similarly, the process could not work without the caseworkers joining us in trying to think of practical ways to improve our relationships.

Understand Each Others' Languages

There needs to be an understanding that, in general, attorneys and social workers think about things differently. They do not always use the same language. Attorneys are taught and are generally good at "multi-tasking," while caseworkers concentrate on single tasks, such as working on specific goals with a family. Attorneys often look at things on a macro or system level, while caseworkers focus on the child or family level. Attorneys have good intuitive adversarial skills, while caseworkers have intuitive social skills. These social skills are necessary for good social work, but may not be useful when it comes to testifying in a courtroom where the adversarial skills come in handy. Additionally, attorneys are not trained in social work practice while in law school, and caseworkers learn very little about the law during their educations. The law is pervasive in the child welfare system, which may be frustrating for caseworkers who focus on helping a family.¹² To improve the relationships, attorneys and caseworkers must acknowledge these differences and try to learn each others' languages.

¹² Telephone interview with Melissa Mitchell, J.D., General Counsel, Franklin County Children Services, Columbus, Ohio based on her discussions with the in-house attorneys at Franklin County Children Services, July 14, 1998.

Share Basic Information

Often attorneys and caseworkers complain that the other group does not understand what they do or their roles. During discussion sessions you could talk about how you came to your positions and what your jobs entail. A caseworker could describe a home visit and the feelings that accompany removing a child from the home. You could discuss how you prepare for a contested hearing and the difficulties involved when you get attached to one of the children. Let the workers know that "lawyers have feelings too!"

Reach Outcomes

You are busy and so are the caseworkers, but try not to let the discussions end until you have realized some positive outcomes. Other areas in which protocols could help are:

- When attorneys should attend meetings between the caseworker and a family.
- The expected responsibilities of the attorneys and workers in preparing a solid case for court.
- Procedures about disclosure of records to other attorneys on the case.
- When it is alright, and when it is not, for caseworkers to communicate with children's and parents' attorneys.
- Implementing an information system to inform everyone about changes in staff, law, and policy.
- How workers and attorneys will communicate: e-mail, written memos, telephone conferencing.
- What the dispute resolution system is and when it will be used.

If not all attorneys and caseworkers attend the sessions, develop a way to share the protocols and the other new approaches with the rest of the staff.

§ 27.4.2 Interdisciplinary Training

In addition to informal sessions, it is helpful for you and the caseworkers to attend substantive trainings in areas that relate to both of your practices. By participating in training together, you will all have the same knowledge base. You will also benefit from spending time together outside the courtroom. While interdisciplinary training cannot resolve all of the issues between you and the caseworkers and it will not provide you with all of the strictly legal knowledge that you need, it is an excellent way for all to develop their skills and knowledge.

Topics to consider for training include:

- Invite a local judge to discuss court practice, the type of testimony he or she prefers, what should be included in a petition, and his or her view of how the court process relates to the child welfare system as a whole.

- Invite a local doctor or other medical expert to talk about the medical evidence that points to abuse, factitious disorder (also known as Munchausen Syndrome by Proxy), failure to thrive, and other medical issues that relate to child welfare. The discussion can also focus on the ethical decisions involved when a parent withholds medical treatment for religious reasons.
- Have a psychiatrist or psychologist discuss mental health diagnoses and the implications for parents and foster children who suffer from the disorders.
- Learn about the substance abuse programs available in your community and how they can be accessed for the children and their parents.¹³
- Learn about other family preservation and reunification services, including special housing programs and how they are used to try to keep families together.
- Explore different ways to use relatives in achieving permanency, and familiarize yourself with local, state and federal law and policy on kinship care.
- Conduct a trial skills program which could include instruction for the caseworker about being a good witness, and practice for the attorneys on direct and cross examination, as well as other evidentiary issues.

§ 27.4.3 Multidisciplinary Teams

In Washington, the agency attorneys and caseworkers have improved their relationships and their effectiveness in cases through two types of multidisciplinary meetings. First, for children, especially young children under three years of age, who have been in foster care for three months, the agency has a prognostic staffing meeting. An attorney attends, and the team reviews the case to determine whether a concurrent plan should be implemented. The caseworkers appreciate having the attorney attend and have found these meetings help reduce the time the child remains in foster care. Because the attorney knows the state legislation, he or she can advise as to whether the case is ready for a termination of parental rights petition or another permanent plan. Additionally, the attorneys and caseworkers are getting to know each other better, which improves their teamwork in all cases.

The courts in Washington, as in many other jurisdictions, also have committees, which are made up of judges, agency attorneys, caseworkers or supervisors, and children's and parents' attorneys, to resolve procedural problems in the court.

¹³ David J. Herring, *Interdisciplinary Training and Assessing Community Services Resources*, in AGENCY ATTORNEY TRAINING MANUAL: ACHIEVING TIMELY PERMANENCY FOR CHILDREN BY IMPLEMENTING THE PRIVATE MODEL OF LEGAL REPRESENTATION FOR THE STATE AGENCY IN CHILD ABUSE AND NEGLECT MATTERS (1992); see also Mimi Laver, *A Guide to Retaining Agency Attorneys*, 17 CHILD L. PRAC. 5, 73-75 (1998).

Through these committees, the court has reduced delays in cases, the participants have gained respect for each other, the judges have taken a positive leadership role, and all players work together to resolve the problems that affect the entire system.¹⁴

§ 27.5 Conclusion

No matter what kind of relationship you have with the caseworkers in your agency, there is probably room for improvement. While it is not easy and may be frustrating, through increased communication and a focus on mutual respect, you can work as a more effective team to benefit the children and families in your community.

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¹⁴ Telephone interview with Linda Katz, MSW, adjunct faculty at the University of Washington School of Social Work, Seattle, Washington, July 14, 1998.

§ 27.8 Responsibilities of Attorney and Social Worker

RESPONSIBILITY	WHO SHOULD DO IT ¹⁵
Investigate the report.	Caseworker.
Discuss the facts with police, medical professionals, and teachers.	Caseworker, who may have discussions with attorney.
Prepare the petition.	Legal assistant, with information from caseworker and supervision of attorney.
Notify the parties of the hearing.	Law office, by subpoena. Caseworker, if required.
Identify witnesses.	Caseworker gives information to attorney and attorney identifies witnesses after reviewing the file.
Prepare the witnesses.	Attorney, who may have help from legal assistant.
Prepare the child witness.	Attorney, who may have caseworker present to support the child emotionally. Remember to collaborate with the child's attorney or CASA.
Prepare any exhibits for the hearing.	Legal assistant and attorney. Caseworker should provide an organized case file.
Other court preparation.	Attorney, with conversations with caseworker.
Present the case in court.	Attorney.
Enter into agreements with the parents.	Caseworker and/or attorney can work with the parents and the other parties should be included before reaching a final agreement.
Ongoing documentation.	Caseworker.
Attend meetings with the family.	Caseworker and sometimes attorney.
Ongoing casework.	Caseworker.

¹⁵ Source: Robin Russel, *Role Perceptions of Attorneys and Caseworkers in Child Abuse Cases in Juvenile Court*, CHILD WELFARE Vol. 67, No. 3, May-June 1988, 205-16. See also DAVID J. HERRING, AGENCY ATTORNEY TRAINING MANUAL: ACHIEVING TIMELY PERMANENCY FOR CHILDREN BY IMPLEMENTING THE PRIVATE MODEL OF LEGAL REPRESENTATION FOR THE STATE AGENCY IN CHILD ABUSE AND NEGLECT MATTERS (1992); Gene D. Skarin, *The Role of the Child Protective Agency's Attorney in Family Court*, 171 PLI/CRIM 431, 459-60 (1995).