Instructor’s Guide

Lesson Four
Ethical Considerations for Attorneys Representing Non-Resident Fathers

Developed by:
American Bar Association
Center on Children and the Law
740 15th Street, NW
Washington, DC 20005
on behalf of
The National Quality Improvement Center on
Non-Resident Fathers and the Child Welfare System
www.fatherhoodqic.org

Based in part on the *ABA Child Law Practice* article series commissioned by the
Quality Improvement Center on Non-Resident Fathers
TITLE: “LESSON FOUR: ETHICAL CONSIDERATIONS FOR ATTORNEYS REPRESENTING NON-RESIDENT FATHERS”

DURATION OF INSTRUCTION: Sixty (60) minutes

TRAINER NOTES:
This is the fourth of four (4) lessons within the “ADVOCATING FOR NON-RESIDENT FATHERS IN CHILD WELFARE COURT CASES” training continuum.

The instructor’s script, companion presentation slides, and all associated handout materials were designed for presentation by experienced training staff that are comfortable enough with the materials to be able to customize the content to the needs of the participants and the time available. For each discussion topic, scripting is offered to guide the lecture and ensure that key points are covered. This script was not designed to be memorized. Rather, it should be used as a guide and expanded to incorporate the trainer’s own knowledge and experience -- thus, enriching the participant’s class experience.

Understanding that each jurisdiction has different law, rules and practices, we expect entities using this curriculum will adapt it to address their practice needs. This may entail emphasizing some lessons or topics over others, omitting materials that do not apply in your jurisdiction or are not necessary for trainees with a certain experience level or adding jurisdiction specific information that is not currently in the curriculum.

Model Rules (MR) are listed in this lesson to acquaint the trainer with the intent of the presentation content. Trainers should replace these rules with their state’s counterpart rules.

TARGET AUDIENCE:
The primary audience will be parents’ attorneys. However, trainers should anticipate attorneys with a range of parent representation experience. Other participants in child welfare proceedings, including non-lawyers, may be invited, such as government attorneys, children’s attorneys or guardians ad litem, along with child welfare agency caseworkers and staff.

CURRICULUM AND LESSON RATIONALE:
Lawyers appointed to represent non-resident fathers in child protection cases need specialized training that goes beyond their minimum obligations and duties. There is no federal law, and few state laws or court rules that mandate pre-appointment training for lawyers appointed to represent parents, and targeted resources or training can be difficult to find. Attorneys for non-resident fathers have even fewer resources and training opportunities available to them.

This lesson will explore various ethical responsibilities of counsel when representing non-resident fathers in child welfare proceedings. The lesson will take into consideration applicable references to the ABA Model Rules of Professional Conduct along with state-
specific rules. Some of the material presented in this lesson comes from the *ABA Child Law Practice* article series commissioned by the Quality Improvement Center on Non-Resident Fathers, particularly the piece by Jennifer Renne on ethical issues in the representation of non-resident fathers. The entire article series, along with additional materials, is available in the book *Advocating for Nonresident Fathers in Child Welfare Court Cases* which may be downloaded for free at [www.fatherhoodqic.org/AdvocatingForFathers.pdf](http://www.fatherhoodqic.org/AdvocatingForFathers.pdf).

Earlier lessons addressed the constitutional rights of non-resident fathers and effective strategies to advocate for the interests of non-resident fathers both inside and outside the courtroom.

### PARTICIPANT REFERENCE MATERIALS:
- Copies of Powerpoint slides
- Handouts for this lesson:
  - Lesson 4: Case Study Handout

### REQUIRED INSTRUCTIONAL MATERIALS:
- Presentation slides
- SVGA projector (capable of projecting presentation slides)
- Laptop or desktop computer (capable of projecting presentation slides)
- 10’x10’ (minimum) projection screen
- Training facility with required seating
- Participant handout packages
- Flip chart(s) and assorted colored markers
- Curriculum post-test (as appropriate)

### PRESENTATION METHOD:
- Lecture and discussion
- Post-training testing (optional)

### REQUIRED READING (FOR TRAINERS):
- Research and develop an understanding of the various federal, state, and local laws and regulations regarding non-resident fathers’ rights and responsibilities in child welfare proceedings.
- Research and develop an understanding of the ABA Model Rules of Professional Conduct and state-specific rules.
- Read publications specific to this lesson subject matter:
  - ABA Model Rules for Professional Conduct (MR 1.1 through 1.7)
  - Applicable State Rules of Professional Conduct and Ethical Opinions
  - Bauer, Linda G.,” Missing in Action: What to Do When You Can’t Find
Your Client,” Massachusetts Board of Bar Overseers, Office of Bar Counsel (2001) <www.mass.gov/ob cbo/missing.htm>

- Check www.fatherhoodqic.org for additional and up to date information on father engagement in child welfare court cases.

ADVANCED PREPARATION (FOR TRAINERS):
- As appropriate, participants should be informed well in advance if they will be tested.
- Read and understand the instructional intent behind each case study, simulation, and exercise.
- Prepare a training workbook for each participant that contains the slides and other handouts for this lesson, as well as a list of additional background reading that the participants may wish to obtain.
- Add jurisdiction-specific information into each presentation where prompted and in other areas where deemed necessary or appropriate.
- Where appropriate, revise or replace language or case study examples used in each lesson in order to match the instructional needs of the target audience and the laws and practice within the jurisdiction.
- Model Rules (MR) are listed in this lesson to acquaint the trainer with the intent of the presentation content. Trainers should replace these rules with their state’s counterpart rules.
- Prepare the training room.
- For group discussions - Trainers should anticipate that the participants will possess a range of previous experience and subject matter knowledge.
- As training progresses, trainers should be prepared to solicit practical experiences from the participants to enrich the training environment.

COURSE TERMINAL LEARNING OBJECTIVE:
Upon completion of the training, and with the aid of reference materials, the participant will be able to effectively advocate for and represent, both inside and outside of the courtroom, non-resident fathers involved in child welfare proceedings.

LESSON ENABLING LEARNING OBJECTIVE:
To achieve the terminal performance stated in the Terminal Learning Objective, the participant will recognize:
- Common and unique ethical responsibilities of counsel representing non-resident fathers in child welfare proceedings.
- Strategies to meet ethical requirements to establish a relationship with a non-resident father client.
- How to meet ethical standards that require the attorney to maintain regular contact with the non-resident father client and competently and zealously represent him.
- Strategies to apply when confronted with conflicts of interest (i.e.: representing both
Advocating for Non-Resident Fathers in Child Welfare Court Cases

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parents; representing multiple fathers).

CUES WITHIN THE CURRICULUM AND THEIR MEANINGS:

- **Required time (Estimated)**
- **Question and Answer opportunity**
- **Slide number to be displayed**
- **Class discussion**
- **Link discussion with state and local law/practice**

THE TRAINING CONTINUUM:

- **Course Introduction**, 15 minutes
- **Lesson One** - Asserting the constitutional rights of non-resident fathers with children involved in child welfare proceedings, 90 minutes
- **Lesson Two** - Effective strategies to advocate for non-resident fathers outside the courtroom, 90 minutes
- **Lesson Three** - Effective strategies to advocate for non-resident fathers inside the courtroom, 90 minutes
- **Lesson Four** - Ethical considerations for attorneys representing non-resident fathers, 60 minutes
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| Slide 1 | **WELCOME, LESSON OVERVIEW, AND INTRODUCTIONS**

Begin the session by welcoming the participants.
Explain the inspiration behind this lesson.

**Suggested monologue**

As we learned in the preceding lessons, representing non-resident fathers is often complex. Ethical standards can help guide the attorney in establishing her priority of work and managing her practice in a way that will benefit the attorney and client.

Where does the attorney’s ethical and legal obligation to her client begin and end? How should the attorney maintain regular communication with his client?

This lesson will explore these and similar issues by focusing on specific ethical considerations associated with representing non-resident fathers in child welfare proceedings.

| Slide 2 | **Learning Objectives**

State that the goal of this sixty minute lesson is for the participants to recognize specific ethical considerations associated with representing fathers in child welfare.


Explain that while this lesson will focus on just a few of the
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<td>proceedings. Explain that the lesson will highlight ethical requirements related to establishing an attorney-client relationship, maintaining regular contact and competently representing the father, and handling conflicts of interest.</td>
<td>specifics, the participant handout materials will contain (or make reference to) a more in depth examination of these considerations.</td>
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<td>Make it clear that each participant should have received a participant handout package. Provide a copy to those in need.</td>
<td>Display a copy of the handout package as an example</td>
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<td><strong>Training Schedule &amp; Logistics</strong></td>
<td><strong>If the training is being presented as part of a series of sessions on different dates (e.g., monthly courthouse brown bags), recap the dates and topics of previous sessions and provide the dates, times and topics for upcoming sessions.</strong></td>
<td><strong>Note:</strong> If appropriate, fill in the specific dates for each lesson listed on the slide</td>
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| **Introduce Trainers and Participants (as appropriate)** | Ask each trainer to briefly introduce themselves to the class and explain:  
- Where they work  
- One or two major responsibilities  
- Experiences related to non-resident father |
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<td>• Expectations of this class</td>
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If time allows…

• Ask each participant to briefly introduce themselves and explain:
  o Who they are
  o Where they work
  o Experiences related to non-resident father representation
  o Expectations of this class

Write participant expectations on the flip chart. Link their expectations to the specific training objectives.

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ATTORNEY APPOINTMENT AND ESTABLISHING AN ATTORNEY/CLIENT RELATIONSHIP

15 min.

Begin by explain that in 1981, the Supreme Court held that indigent parents do not have an automatic right to counsel in child welfare proceedings, even at the termination of parental rights stage.¹

Continue by stating that the practice of appointing counsel for parents often varies by state in terms of duration and scope. Explain that many states, however, recognize the need for parents to have representation in
dependency cases, or at the very least, at the termination of parental rights hearing. Some jurisdictions even appoint non-custodial parents counsel at the initial court hearing, even if the parent has not been located.

**Explain this state’s law and practice governing representation of parents in child welfare hearings.**

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<td>Share some of the benefits to early appointment with participants:</td>
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<td>• Being involved in the case from the beginning</td>
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<td>• Being able to secure the father’s rights early in the case</td>
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<td>• Getting him started on a case plan and needed services early</td>
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<td>• Searching for him if he has not been located</td>
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<td>• Having an advocate stay on top of the agency regarding diligent efforts to locate</td>
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<td>• Giving the father a sense of being acknowledged, heard and supported</td>
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Remind participants that there are some possible detriments to early appointment as well:

• Waste of court resources
• Questions about what, if any, representations counsel can make on a missing client’s behalf
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<td>The father may already have his own attorney</td>
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<td>Continue by stating that when counsel is appointed at the beginning of the case, and the father has not been located, ethical questions arise about whether an attorney-client relationship has been established. In other words, does appointment alone create the attorney-client relationship?</td>
<td>If your jurisdiction never appoints attorneys to “missing” fathers you may wish to address these issues later, in the discussion of when attorneys lose contact with clients.</td>
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<td>There are several permutations to this potential ethical dilemma, as discussed below.</td>
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<td>Ask the participants to respond to the following inquiry.</td>
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<td><strong>Question:</strong></td>
<td>What are the lawyer’s duties to represent a client’s interests when:</td>
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<td>- Father’s identity is unknown</td>
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<td>- Father’s identity is known, but his whereabouts are unknown</td>
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<td>- Father’s identity and contact information, including address is known, but father is not present</td>
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<td>- The putative father is named on the petition, but paternity has not been established</td>
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| Slide 8 | Here, generally, courts find that a client cannot be bound by actions taken by counsel without the client’s knowledge or consent. Moreover, taking action without client consent or knowledge may violate Model Rule of Professional Conduct 1.2, which states in pertinent part:  

   \[\ldots\, A \text{ lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.} \ldots\ | Model Rules (MR) are listed in this lesson to acquaint the trainer with the intent of the presentation content. Replace these rules with your state’s counterpart rules. |
| Slide 9 | In essence the client, not the lawyer, controls the issues pursued during the course of representation.  

   Although the lawyer may not be able to advocate on behalf of his client, once he has been appointed, a lawyer-client relationship has been established, thus binding the attorney to certain ethical obligations. In fact, lack of effort by the attorney could lead to discipline later on.  

   Therefore, the attorney must make efforts to locate his client. This requirement is encompassed by the general tenets of Model Rule 1.3 which requires counsel to “act with reasonable diligence and promptness in representing a client.” |
Remind participants further that a failure to locate fathers early may prevent children from establishing a relationship with them, deprive children of potential paternal relative resources or, if the child’s case goal becomes adoption, delay permanency planning. There are many avenues through which the father may be located; asking the mother about his whereabouts is not enough. For example, to encourage the swift identification of non-resident parents, ASFA explicitly encourages agencies to use the Federal Parent Locator Service. Attorneys should encourage its use by the child welfare agency to hasten identification efforts.

Other methods that can be used to locate a client (either at the beginning of representation or if the attorney later loses contact) include:

- Sending a letter to the last known address
- Sending letters to any of the client’s relatives
- Consulting the phone book covering the area of the last known address
- Consulting web sites that focus on addresses and phone numbers
- Consulting the state Department of Revenue to determine if it has an address for the father on file
- Searching public records (DMV, social security, courts) through Westlaw, LexisNexis/ChoicePoint or government or private websites
- Reviewing the agency’s file for details that could lead to the client or other information sources (and

Refer participants to additional resource:


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### Subject Outline

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| Contact any friends or relatives who may be able to put you in touch) | As appropriate, mention other local resources available in this jurisdiction.
| • Checking the Federal Bureau of Prisons inmate locator ([http://www.bop.gov/inmate_locator/index.jsp](http://www.bop.gov/inmate_locator/index.jsp)) and any state websites that track incarcerated individuals. | Sources: Linda G. Bauer, Missing In Action, and Andrew Cohen, Special Considerations in Representing Parents (see above for full citations). |
| • Ensuring the agency is also taking on the above location efforts | |
| • Asking at the initial hearing that the court require the agency to use family finding or family search strategies to locate the father and/or other paternal relatives | |

Sample Internet sources used by caseworkers to locate fathers and other family members include:

- Peopleprofileusa.com
- usatrace.com (search by name and SS#)
- People-data.com
- Social Security Death Index
- Reunitettonight.com
- Myfamily.com
- Intelius.com

If you engage in these location efforts, you may find your client before the agency does. He may tell you that he does not want to participate in proceedings and indeed, may not want his whereabouts disclosed. This
could be based on a number of reasons including outstanding child support payments, an immigration issue, or a criminal issue.

If your client does not want his whereabouts disclosed, you should not reveal this information, and should consider not even disclosing that you have had contact with the father. This information is protected under MR 1.6 concerning confidential information. Under M.R. 1.6(b)(6) there is an exception to keeping this information confidential, which states that “pursuant to the law, or court order, an attorney may reveal what would otherwise be protected confidential information.”

Theoretically, a court could order the attorney to disclose the client’s whereabouts, but under the Model Rules, this exception is permissive, not mandatory. Therefore, the attorney could refuse to reveal the information to the court. Some states do not have the MR 1.6(b)(6) exception, therefore there is no circumstance under which the attorney may reveal the information. Conversely, in some states, the exception is a mandatory one. Therefore, if faced with this scenario, the attorney should consult state ethics rules.

Summarize the topic

- Many jurisdictions don’t appoint counsel until the father appears in court.
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|     | - Restate the state’s law governing representation of parents in child welfare hearings.  
     | - The client, not the lawyer, controls the issues pursued during the course of representation.  
     | - It is the appointment that triggers the attorneys’ ethical duties, including making an effort to locate the non-resident father client.  
     | - Unless and until contact is made, typically the lawyer may not assert any positions on behalf of the father.  
     | - If you contact your client and he does not want his whereabouts disclosed, you may not have to reveal his location to the court or other parties. | |
|     | DILIGENT REPRESENTATION AND MAINTAINING COMMUNICATION | |
| 10 min. | Explain that the following fictitious case study will be used to examine ethical issues around maintaining contact with and diligently representing non-resident fathers. | |
| Slide 14 | **A Case Study**  
Jane represents Stuart. Stuart is the non-resident father of Lyle and Cedric, both of whom are in the foster care system because of neglect by their mother. Stuart was | Refer participants to Lesson 4: Case Study Handout |
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<td>notified of the initial hearing and attended the hearing. He was very upset about his children being placed in care and wants them to move in with his mother, immediately. Stuart is aggravated by the length of time it is taking for the agency to place the children with his mother. He calls Jane multiple times each week to find out how the process can be expedited. He is getting increasingly angry with each call.</td>
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<td>Jane represents hundreds of parents in child welfare cases. She is sometimes able to call Stuart back, but not always promptly. Frequently, she uses the wait time before court proceedings to update her clients on the status of their cases and discuss issues the client may have. She encourages her clients to write down their problems or concerns between court proceedings and bring them to court so they can discuss them and possibly address them in the court hearing.</td>
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Ask the participants to respond to the following inquiry.

**Question:**
Is Jane complying with her ethical duties to maintain communication with her client and diligently represent his interests?
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| Begin by stating that to a certain extent what constitutes “diligent” client representation and the degree to which a lawyer must maintain communication with her client is subjective.  
- ABA Model Rules 1.3 and 1.4, however, explicitly direct the lawyer in both these regards.  
- Model Rule 1.3 directs the lawyer to “act with reasonable diligence and promptness in representing a client.” | Model Rules (MR) are listed in this lesson to acquaint the trainer with the intent of the presentation content. Replace these rules with your state’s counterpart rules. | |

**Group Exercise:**

Place two signs within the training room. One sign will read “agree” and the other will read “disagree.”

Ask participants to respond to the following statements by standing near the appropriate sign. Solicit explanation and discussion about participants’ choices:

- **Statement 1:** It is unethical to only speak with a client immediately before court hearings.
- **Statement 2:** It is unethical to delay court proceedings because the attorney did not take sufficient time to prepare.

Following the exercise and subsequent discussions, thank the student for their participation and allow them to return to their seats.
Slide 17

Note that the commentary after Model Rule 1.3 further explains that “no professional shortcoming is more widely resented than procrastination. A client’s interests often can be adversely affected by the passage of time or the change of conditions.” It further notes that “unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer’s trustworthiness. A lawyer’s duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer’s client.”

Model Rule 1.4 states that the attorney must:

- **Promptly** inform the client of any decision or circumstance with respect to which the client’s informed consent, as defined in Rule 1.0(e), is required by the Rules;
- Reasonably consult with the client about the means by which the client’s objectives are to be accomplished;
- Keep the client *reasonably informed* about the status of the matter; and
- **Promptly** comply with reasonable requests for information.

Note that the commentary after Model Rule 1.4 further

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*Model Rules (MR) are listed in this lesson to acquaint the trainer with the intent of the presentation content. Replace these rules with your state’s counterpart rules.*
explains that: “a lawyer’s regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation.”

Both rules encourage “prompt” and “reasonable” communication as the cornerstones of diligently representing a client. It is fair to say, therefore, that the attorney should be in contact with his father client on a regular basis to assess his goals for the case and advise him as to the same whether appointed or retained.

**Practice Tips:**

To help ensure compliance with these ethical requirements, attorneys can:

- Explore whether the agency made reasonable efforts to contact the father; (This is often the most time efficient thing to do, and if the attorney does it frequently, the agency may move faster in the future.)
- Make their own efforts to locate “missing” clients (using the suggestions above);
- Call, write or e-mail the client regularly to provide status updates and learn of any changes in the client’s situation or wishes; and
- Make sure that the client is able to contact them: provide stamped self-addressed envelopes (particularly for incarcerated clients) and tell the
client he can call collect. (Attorneys may also wish to state in their outgoing voicemail message that they will accept all collect calls.)

Explain that a common problem in child welfare cases is losing touch with a client after case inception. This is a particular concern with non-resident fathers who may have had a limited relationship with the child before the case and may feel discouraged about what role he can or should play in the case going forward. This, coupled with other individual and systemic barriers and biases, increases the likelihood that the non-resident father may not remain actively involved throughout the course of the child welfare case.

*Case Study (continued)*

*Stuart attempted to maintain regular contact with his attorney, Jane, for several months. However, he became increasingly frustrated with her lack of response and the failure of the system to move quickly to place his children with his mother. After the adjudicatory hearing Stuart began to call Jane less and started to miss court appearances. Jane attempted to call him before a few hearings, but his cell phone had been cut off. She sent a letter to his last known address, but it was returned.*

*In the meantime, Stuart’s mother failed the agency’s*
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| home study because she lived in a run-down studio apartment that was not deemed big enough to house Cedric and Lyle. It is now the permanency hearing and several months have passed since Jane received any instruction from her client. |

State that the genesis for an effective working relationship is regular, substantial communication with the father. However, lawyers representing non-resident fathers sometimes have difficulty maintaining contact with their client. The ABA Model Rules of Professional Conduct mandate that counsel keep their client reasonably informed about the status of the case. Yet, developing and maintaining a strong line of communication with a non-resident father can be challenging.

Ask the participants to respond to the following inquiries.

**Questions:**
- What, if any, representations can Jane make on Stuart’s behalf at the permanency hearing?
- Can she continue to represent him at this point or after, at a potential termination of parental rights hearing?
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|         | Explain again how ABA Model Rule 1.2 discusses the parameters for pursuing the client’s goals and how objectives are set by the client, not the lawyer. State also that Model Rule 3.1 provides some limitation on this right of the client, in that it states:  
* A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.  
According to Model Rule 1.2, the client has the “ultimate authority to determine the purposes to be served by legal representation.” Furthermore, the lawyer should consult the client about the means by which the client’s objectives are to be pursued, but “may take such action as is impliedly authorized to carry out the representation.” Generally, clients “defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters.”  
Note that like other ethical areas discussed in this lesson, there is a level of subjectivity associated with how to move forward on behalf of an absent client. If the lawyer has had sufficient meaningful interaction | Model Rules (MR) are listed in this lesson to acquaint the trainer with the intent of the presentation content. Replace these rules with your state’s counterpart rules.                                                                                                                                 |
with the client before his disappearance, then she may have enough information to continue to represent him. However, if there is a substantial change in circumstances that the client is not aware of or a substantial passage of time, counsel may not be able to continue to represent the client based on his earlier expressed goals.

Without regular and active communication between attorney and client, the attorney may not be able to continue representation of a client through termination of parental rights proceedings or file an appeal to the same.

State that the rules do not definitively determine an answer to the question of when an attorney should or should not continue representation. Explain that there is very little guidance in the case law.

Continue by stating that attorneys will have to make some decisions based on what a reasonable attorney would do in their situation.

Although it is sometimes hard to maintain frequent communication with a non-resident father client, attorneys can do several things to avoid some of the ethical pitfalls discussed above.

If client disappears after he has already been located,

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- with the client before his disappearance, then she may have enough information to continue to represent him. However, if there is a substantial change in circumstances that the client is not aware of or a substantial passage of time, counsel may not be able to continue to represent the client based on his earlier expressed goals.

- Without regular and active communication between attorney and client, the attorney may not be able to continue representation of a client through termination of parental rights proceedings or file an appeal to the same.

- State that the rules do not definitively determine an answer to the question of when an attorney should or should not continue representation. Explain that there is very little guidance in the case law.

- Continue by stating that attorneys will have to make some decisions based on what a reasonable attorney would do in their situation.

- Although it is sometimes hard to maintain frequent communication with a non-resident father client, attorneys can do several things to avoid some of the ethical pitfalls discussed above.

- If client disappears after he has already been located,
met with his attorney, and came to court, the attorney still has an obligation to search for him as discussed above.

**Practice Tips on Maintaining Contact**

- At the first meeting, the attorney should make sure that she has all of client’s contact information (address, telephone number, employer, list of relatives, Social Security number, driver’s license number, etc.) and that he has her office contact information. She should also stress to the client how important it is that he stay in touch and let her know if his contact information changes.
- The attorney should work with the client to develop a plan to overcome those issues that prevent regular communications.
- Counsel should also use this first meeting to obtain a clear statement from the client detailing his desired outcome. This statement alone can go far to building an effective working relationship (the intent should be clear to all parties) while ensuring that counsel can advocate on the father’s behalf in his absence.
- Regular calls and periodic meetings can help ensure important information is shared and builds the client’s trust and confidence in his attorney. Without regular communication, counsel may learn of events too late to effectively challenge the results (e.g., the social worker insisted that the client sign a statement before counsel has had a chance to review it; the

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**Notes**

Solicit other practical examples from the participants

Query experienced participants for lessons learned concerning inadequate communication with non-resident fathers.
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<tr>
<th>Cue</th>
<th>Subject Outline</th>
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<tbody>
<tr>
<td></td>
<td>father dropped out of treatment; the father no longer wants to pursue his original goals.</td>
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<td></td>
<td>• Discuss specific services that might help your client achieve his goals (e.g., transportation vouchers, housing assistance, job training and assistance, and etc.).</td>
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<td></td>
<td>Summarize the topic</td>
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<td></td>
<td>• The genesis for an effective attorney/client relationship is regular, substantial communication.</td>
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<td></td>
<td>• Counsel should use their first meeting to obtain a clear statement from the client detailing his desired outcome.</td>
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<td></td>
<td>• The attorney should work with the client to develop a plan to overcome those issues that prevent regular communications.</td>
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<td></td>
<td>• What constitutes “diligent” client representation and the degree to which lawyers must maintain communication with her client is subjective, but ethics rules provide some guidance.</td>
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<td>• Restate the relevant state rules of conduct</td>
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COMPETENT REPRESENTATION

10 min.

**Case Study(continued)**

Jane has represented parents and children in child welfare cases for 20 years. She is conversant in this

Refer participants to Lesson 4: Case Study Handout
<table>
<thead>
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<th>Cue</th>
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<tbody>
<tr>
<td>Jane has had to take a leave of absence due to illness. In her absence, she has asked Gordon to stand in for Stuart’s case.</td>
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<td>Gordon is fresh out of law school. As a law student he took family and juvenile law courses and volunteered as a court appointed special advocate (CASA). During that experience he was particularly moved by how sympathetic the parents were in his CASA cases. Gordon has decided to become a solo practitioner representing parents in child welfare cases. With his prior CASA experience and favorable recommendations, he is named on the court’s parents’ attorney panel. With the exception of a half-day introductory class, Gordon will have no other training before taking his first cases. He is eager to get started but plans to take it slow, taking no more than 30 cases to give his clients the individual attention he thinks they need.</td>
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</table>
Ask the participants to respond to the following inquiries.

Questions:
- Will Gordon be able to competently and thoroughly represent Stuart?
- Do you have any ethical concerns regarding his representation of Jane’s clients?

State that Model Rule 1.1 includes four components to competently representing a client. They include:
- legal knowledge
- legal skill
- thoroughness
- preparation

These components suggest an attorney’s need to effectively engage her client and an ability to communicate/represent the client regardless of cultural differences.

Incompetence may arise when an attorney:
- Lacks adequate education or training
- Does not have sufficient supervision or mentorship
- Procrastinates or neglects client matters
- Carries too high a caseload
- Does not have sufficient staff and other professional

Model Rules (MR) are listed in this lesson to acquaint the trainer with the intent of the presentation content. Replace these rules with your state’s counterpart rules.
Cue | Subject Outline | Notes
---|---|---
supports
- Lacks cultural awareness/competence

Explain that the comments to Model Rule 1.1 also provide guidance.

- Comment 2 suggests that a “lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. . . A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.”

- Comment 4 suggests that “a lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation.”

**Practice Tips:**

To avoid some of these pitfalls, counsel may:

- Identify training or continuing education opportunities through the court, local or state bar association and/or legal aid, defender, child law office or child welfare agency.
- Seek out an experienced attorney in the field who is...
willing to be a mentor or simply a sounding board for ideas.

- Seek reimbursement from the court to hire investigators when needed to thoroughly represent clients.
- Review the relevant state standards of representation for lawyers representing parents in abuse/neglect cases, which enumerate issues parents’ counsel should be cognizant of prior to taking cases.

Further explain that to thoroughly represent and reasonably prepare a case on behalf of a non-resident father may present special challenges. This is particularly true when so many non-resident fathers have not been actively involved in their child’s lives and may be hard to engage in the court process. For these clients, attorneys can take the following steps to ensure thorough preparation and representation:

**Practice Tips:**

- Apprise the father of his rights and responsibilities and explain what will be happening in the case and the ramifications of each step (using language that he can understand). Educate him about ASFA timelines and the importance of moving quickly to accomplish his goals.
- Coordinate with the father and agency to develop a case plan and discuss with the father why it is important to work with the agency to complete it.
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<td>Help identify carefully tailored, specific, appropriate, and gender-responsive services for the family and father – ultimately providing them with the needed tools to exercise control over their circumstances.</td>
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<td>If the father is not in a position to take or does not desire custody, explore other rights such as visitation and advocate accordingly.</td>
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<td>Find out if the father has relatives who may be interested and suitable long- or short-term caregivers.</td>
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<td>Do not rely on social services to do the legwork on contacting and investigating alternative caregivers. If necessary, the lawyer should make contact with relatives herself.</td>
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<td>Establish paternity (if that is at issue).</td>
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<td>Review whether there are existing custody orders through domestic relations court that may have an impact on the dependency case.</td>
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<td>Determine visitation parameters (frequency, location, supervised versus unsupervised).</td>
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<td>Participate (with the father) in mediation, family group conferencing, multi-disciplinary team meetings and any other formal or informal “out of court” opportunities to shape and achieve the father’s goals.</td>
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</table>
Summarize the topic
- To competently represent a client, the lawyer must have sufficient knowledge and skill, and be prepared and thorough.
- Attorneys should seek out continuing education opportunities and review relevant state parent representation standards
- To be thoroughly prepared attorneys should learn and advocate for their client’s position with respect to services, visitation and placement.
- Restate this state’s relevant ethics rules

**CONFLICT OF INTEREST**

**Case Study (continued)**
At an early court proceeding, Cedric’s and Lyle’s mother, Janice, states that she is not sure whether Stuart is Cedric’s father. She names Joe as another putative father. Pending a paternity test, counsel is asked to represent both Stuart and Joe.

Ask the participants to respond to the following inquiries.

**Questions:**

Refer participants to Lesson 4: Case Study Handout

Explain jurisdictional restrictions to these practices
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</table>
| Slide 35 | - *Can counsel ethically represent both putative fathers?*  
  - *Are there any circumstances by which counsel can ethically represent Stuart and Janice (i.e. a non-resident father and custodial mother)?* | |
| Slide 36 | Tell the participants that Model Rule 1.7 **strongly discourages** attorneys from representing multiple clients when there is even the possibility of a conflict.  
- **MR 1.7(a)(1)** prohibits attorneys from representing a client if his interests are *directly adverse* to another client.  
- **MR 1.7(a)(2)** further prohibits attorneys from representing a client if by doing so she creates a significant risk that her representation of one client would be “materially limited by the lawyer’s responsibilities to another . . .” | *Model Rules (MR) are listed in this lesson to acquaint the trainer with the intent of the presentation content. Replace these rules with your state’s counterpart rules.* |
| Slide 37 | However, there are limited circumstances under which these rules may be waived.  
- **MR 1.7 (b)** states that notwithstanding the existence of a conflict, a lawyer may represent a client if:  
  - the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;  
  - the representation is not prohibited by law;  
  - 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 other proceeding before a tribunal; *and*
- each affected client gives informed consent, confirmed in writing.

Make it clear that in the majority of cases involving multiple children and multiple parents, conflicts are foreseeable, and therefore a lawyer should not accept appointment for two non-resident fathers. For example, representing multiple parties may result in confidential information about the mother, each other (different fathers), or the children being compromised when negotiating and advocating for the respective fathers. It may also result in counsel arguing conflicting positions with respect to the placement of siblings.\(^{ix}\)

Note that even if both parties consent to waive any potential conflicts, if the representation of both could lead to an assertion of a claim by one client against the other within the child welfare case, that the attorney should not represent both parties.

Summarize the topic
- Cases involving conflict of interest are often foreseeable in the child welfare context, and therefore a lawyer should not accept appointment in these instances.
- The prohibition against lawyers representing clients...
when there is a conflict of interest is grounded in the notion that lawyers owe clients duties of loyalty, independent judgment, zealous pursuit of client objectives, and client confidentiality.

- Explain whether state rules suggest that if not quite explicitly forbidden, practice subject to conflicts of interest is strongly discouraged.

### CONCLUSION

Summarize by reminding the participants that representing non-resident fathers is a significant and challenging undertaking.

State that attorneys have an ethical responsibility to zealously advocate for their clients, guide them through the decision-making process so that they can make informed decisions, communicate with and apprise them of their choices as well as the ramifications and obligations surrounding each alternative. In doing so, the attorney must be aware of potential conflicts of interest, actions to take upon appointment, and methods available to maintain regular communication with the client.

Conclude by restating that the goal of this lesson was for the participants to explore common ethical pitfalls for attorneys representing fathers, common barriers to
Advocating for Non-Resident Fathers in Child Welfare Court Cases

Lesson 4
Instructor’s Guide

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<tr>
<td></td>
<td>establishing an effective attorney/client relationship, how to maintain regular contact with a father client and competently and zealously represent him.</td>
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<td>Wrap up by stating that their work is of tremendous importance – to both their clients directly and to their children.</td>
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<td>Restate that this is the final lesson of the four-part curriculum.</td>
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<td>• Solicit and respond to remaining questions</td>
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<td>• Describe how to obtain more information</td>
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<td>• Distribute and collect evaluation forms</td>
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<td>• As appropriate, explain that a post-test will be administered in the near future</td>
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<td>CLOSE THE TRAINING</td>
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\(^1\) Lassiter v. Dept. of Social Services of Durham County, N. C., 452 U.S. 18 (1981): A presumption against the right to counsel must be balanced against (1) the private interest at stake, (2) the government’s interest, and (3) the risk that the procedures used will lead to erroneous decisions.

\(^2\) See, e.g., Copper v. Salomon Bros., Inc., 1 F.3d 82 (2d Cir. 1993); Lynch v. Deaconess Medical Center, 776 P.2d 681 (Wash. 1989).

\(^3\) See, e.g., Ferri v. Ackerman, 444 U.S. 193 (1979).


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vi Ibid.


viii See Renne and Bauer supra note v.

ix Ibid.