

LEGAL ETHICS IN DEPENDENCY PRACTICE
SCENARIO #1

Sarah King – Child victim
Bonnie Barton – Sarah’s half-sibling
Joe Barton Jr. – Sarah’s half-sibling
Patricia Barton – Mother
Bill King – Father of Sarah
Trina Slater- Case Manager

Elaine Spana – Protective Investigator
Carol Thomas – DCF Attorney
Joe Spana Sr. – father of Bonnie and Joe Jr.
step-father of Sarah
Sue Watson, Guardian Ad Litem
Phil Jones, Guardian Ad Litem Attorney

On May 25, 2007, the Department received a child abuse report which alleged that Sarah King, age 10, was sexually abused by her step-father, Joe Barton, Sr. Sarah told the investigator that Joe, her step-father, rubbed her private part with his private part. Sarah stated that she had two siblings, Bonnie Barton, age 7, and Joe Jr., age 6. She said that her siblings were the children of Joe Sr. Sarah said that she told her mother about what Joe did and that her mother did not believe her.

Elaine responded to the home and spoke with the mother, Patricia Barton, Joe Jr., and Bonnie. Patricia said that she did not believe that Joe abused Sarah. She said that Sarah did not like her step-father and wanted to live with her father, Bill King, in Ohio. Bonnie and Joe Jr. denied ever being touched inappropriately or seeing anyone being touched inappropriately.

Elaine removed Sarah from the home but left Joe Jr. and Bonnie because Carol told her there was no legal sufficiency to remove them. After the shelter hearing, Sue Watson, a Guardian Ad Litem, was appointed to represent Sarah’s best interest in the case. Phil Jones, Guardian Ad Litem Attorney, was assigned to the case.

A dependency petition was filed only as to the child, Sarah. The mother consented to the petition. Sarah’s father, Bill King, was named in the dependency petition but there were no allegations in the petition regarding him. Although she had his address, Carol did not have Mr. King served with the petition by mail or through a process server.

Elaine appeared at the arraignment hearing and told Carol that Patricia was going to consent to the petition. Elaine said that she told Patricia that the only way to get Sarah back would be to consent to the petition and work on a case plan. Sue was present when Elaine told Patricia this but said nothing at the time. However, she told Phil about the conversation. Patricia waived her right to an attorney and consented to the petition. Both Carol and Phil stood silent as the judge accepted the plea.

At the disposition hearing, the court accepted a case plan which required Patricia to complete a parenting course, a non-offender sexual abuse treatment course, and a requirement not to allow Joe Sr. to have contact with Sarah unless he completed sexual offender treatment.

Patricia completed her case plan courses and told the case manager, Rob Troup, that Joe Sr. was no longer living in the house. The court granted Patricia unsupervised visitation with Sarah so long as she did not allow contact between Joe Sr. and Sarah. Joe Sr. never completed sexual offender treatment.

Rob noticed that Joe Sr.'s car was in the driveway of the family home when Rob made an unannounced visit. Patricia said that Joe Sr. comes to dinner sometimes when Sarah is not around. Patricia said that she still did not believe that Joe Sr. abused Sarah, but that she would keep him away from Sarah. Rob reported his concerns to Sue.

A year passed and three different case managers handled the case. Trina Slater, the current case manager, asked the DCF attorney to file a motion to reunify Sarah with her mother and siblings because Patricia completed her case plan.

When Phil received a copy of the motion, he met with Sue to discuss the case. Sue told Phil that she thought Patricia was doing a great job raising her children. Sue related that she did not really believe Sarah about Joe Sr.'s abuse and that she thought Joe Sr. was a great father to his children. Sue said that she did not have any problems with the motion to reunify and that she thought it would be fine to close the case immediately. Phil asked Sue the date that she last saw the children. She said that she saw them four months before but had not seen them since because she was sick and had car problems. Phil determined that all of Sue's visits were announced. Phil was very concerned about Sue's handling of the case.

The hearing on the motion to reunify was heard a couple of weeks after Phil received the motion. Sue had one announced visit between the receipt of the motion and the hearing. Bill King, Sarah's father, appeared for the motion hearing. Before the hearing, Bill spoke with Phil and said that he wants custody of Sarah. Phil said that he thought that it would be a good idea for Bill to obtain custody of Sarah and that he would recommend to the court that Bill get custody of Sarah. Bill thanked Phil.

Phil asked Trina whether there was a background screen done on Bill King. Trina said that Bill mentioned he had some minor criminal charges, but nothing more.

At the hearing, Bill asked for custody of Sarah. Patricia objected. Carol took testimony from Trina who said she thought it was the best thing for Sarah. Phil whispered to Sue to not say anything and just let Bill take Sarah.

The judge asked Trina if there was anything that would place Sarah at risk with her father. Trina said that there was nothing. Although Carol and Phil knew that there was no background screen conducted on Bill King and that there was no approved home study from the Ohio social service agency (a violation of the Interstate Compact on the Placement of Children), Carol told the court that the state recommended that the judge place Sarah with Bill King. The judge asked if the Guardian Ad Litem concurred. Phil shook his head in the affirmative. The judge placed Sarah with Bill King and terminated jurisdiction.

1. What are the ethical issues in this scenario?
2. What rules dictate Phil's conduct?
3. What could Phil have done differently?