



Advancing The Self-Determination Of Clients With Disabilities

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Agenda

- The National Council on Disability
- Representing People with Disabilities
- Example: Representing Parents with Disabilities
- Questions & Answers

National Council on Disability

NCD is a small, independent federal agency charged with advising the President, Congress, and other federal agencies regarding policies, programs, practices, and procedures that affect people with disabilities. NCD is comprised of a team of 15 Presidential appointees,* an Executive Director, and 12, full-time professional staff.

* As of July 22, 2014, the passage of the Workforce Innovation and Opportunities Act (WIOA), the Council will transition to nine Members including four appointments which will be made by Congress.



Client Under a Disability

(a) Maintenance of Normal Relationship. When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client. *Florida Bar Rule 4-1.14*

A Few Words About Disability

- Age
- Physical Disability
- Mental Health
- Cognitive Impairments
- Intellectual Disabilities
- Experience
- Situational
- Temporary



Competing Responsibilities

- Responsibility to Client
 - Representative/Agent
 - Advisor
 - Advocate
 - Objectives and scope
- Responsibility to Society
 - Officer of the Court
 - Personal Values Regarding Outcome
 - Competing Social Values

Responsibility to Client

- Representative/Agent
 - You may step into the person's shoes, your actions may depend on their capacity
- Advisor
 - independent professional judgment
 - candid advice
 - may refer to moral, economic, social, and political factors that may be relevant to the client's situation.

Responsibility to Client

- Advocate

- Duty to use legal procedure for the fullest benefit of the client's cause
- Good faith arguments in support of the client's positions

- Objectives and scope of representation

- Leave the client better off
- Consult with client and abide by their decisions

RULE 4-1.14 CLIENT UNDER A DISABILITY

- (a) Maintenance of Normal Relationship.
 - When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client. Appointment of a guardian
- (b) Appointment of a Guardian

Decision-Making Alternatives

- Self-Determination
- Substituted Judgement
- Best Interest

Self-Determination

- Right to determine for oneself how to live and what to live for
- Liberal ideal that has not been assumed for people with disabilities
- Key principle of disability rights movement, particularly complex in light of perceived or actual need for supports

Self-Determination

- Freedom
- Authority
- Support
- Responsibility
- Confirmation



Operationalizing Self-Determination

- Need for support ≠ lack of autonomy
- From “program-centered” to “person-centered”
- Dignity of risk
- Supported decision-making
 - MAP, PATH, ELP

Least Restrictive Option

- Olmstead v. L.C. 527 U.S. 581 (1999)
- This concept not only applies to living environment
 - Extension to employment
 - Decision-making options

Informed Consent

- Disclosure to the person of relevant information
- Freedom of choice in a non-coercive environment
- Ability to make and communicate a decision

Substituted Judgment

- Determining what the individual would choose if they had capacity
 - Based on known values and preferences
 - May be as presently expressed or prior to lost capacity
 - Statements and actions
 - Person's lifestyle and enduring characteristics
 - Conversations with family and friends

Best Interest Standard

- Acting in the interests of the person's health, welfare and wellbeing
- May be overarching goal of justice system in a particular context
- What's best as determined by "reasonable person"
 - Many lawyers seem to default to this problematic standard, don't!

Practical Considerations

- Formal and Informal Supports
 - Decision-making
 - Public Benefits
- Recognizing when things go wrong
 - Abuse/Neglect
 - Exploitation

Formal and Informal Supports

- Decision-making options
 - What tools and supports does the person need?
 - May be circles of support, banking options, POA, trust, representative payee, guardian advocacy or guardianship
- Public Benefits
 - What services and supports does the person need?
 - Medicaid (waivers), Medicare, HUD, food stamps etc.

Transition

- IDEA requirements
- Vocational Rehabilitation
- Transition/ discharge planning
- Ongoing and dynamic