



BOUSQUET HOLSTEIN PLLC

Legal Ethics in Elder Abuse Cases

Presented By

Emilee K. Lawson Hatch, Esq.
Attorney in Trusts & Estates Practice Group
Bousquet Holstein, PLLC





BOUSQUET HOLSTEIN PLLC

What legal ethics issues are relevant in elder abuse cases?

What is your role?





BOUSQUET HOLSTEIN PLLC

Audience

Are you a:

- Social Worker
- Family Member
- Health Care Worker
- Attorney
- Financial Advisor/CPA
- Senior
- Witness
- Survivor
- Friend



Joe's Case

- You were contacted by Joe's daughter, Sarah
- Joe is age 91
- Joe lives in New York and is a widow
- Joe was admitted to the hospital
- Daughter has asked you to go and visit her father
- Daughter has indicated that she wants to become her father's agent under his POA

Joe's Case, Cont.

- You meet with Joe at the hospital
- Joe tells you that:
 - A few years ago he signed paperwork allowing his son to help him
 - His son has stolen money from him
 - Joe wants to take away his son's authority over him
 - He is worried about what his son will do

Joe's Case, Cont.

- Joe tells you that:
 - He does not want to appoint his daughter as agent
 - He wants to appoint his favorite home health aide as his agent
- The appointment ends and you tell Joe you will call him tomorrow

Joe's Case, Cont.

- The next day...
 - You call Joe
 - He does not remember you at first
 - He is angry and asks if you work for his son
 - You remind him of your visit, he calms down, and says he does want your help

Joe's Case, Cont.

The same day...

- Sarah calls you and asks if and how you are going to help Joe
- Wants to know if you will be appointing her as POA

Who is the client?

Attorneys – Rules:

Rule 1.4 - Communication with client

NAELA Standards and ACTEC:

- Initial meeting with client alone
- Written agreement identifying client and scope of representation

1.4 and 1.14 – Communication if client under disability

1.6 - Communication with third parties – family, friends, spouses, other professionals, etc. – Only with informed consent

Red Flags of Elder Abuse

- Third party does not want you to meet or talk with senior alone
- Senior appears afraid of third party
- Senior always defers to other person(s)
- Third party says senior is incapable of meeting with you and doing other things on her/his own
- Missing money/unexplained transactions
- Conflict among other family members; each blaming other

Confidentiality

- Attorneys – See Rule 1.6
- Relevant ethical standards
- Relationship with client under a disability
- Taking reasonable protective action
- Informed consent to speak with third parties

Conflicts of Interest

- Attorneys – See:
 - Rule 1.7 – Conflict of Interest: Current clients
 - Rule 1.8 – Current Clients: Specific Conflict of Interest Rules
 - Rule 1.9 – Duties to Former Clients
 - Rule 1.10 – Imputation of Conflicts of Interest
- Conflicts among family members
- Informed consent
- Conflict waivers

Clients with Diminished Capacity

- Attorneys – See Rule 1.14
- Relevant ethical standards
- What is diminished capacity?
- Reasonable protective action?

Duty to Report Abuse

Best Practice for Lawyers

- Meet with client privately
- Determine your role
- Engagement/disengagement letters (attorneys)
- Bring in third parties, if appropriate, and if informed consent is given
- Consider what you would want if you were the senior

- Engagement letters – three components
 1. Explain scope of services
 2. Explain fees, expenses, and billing practices
 3. Client has the right to arbitrate fee disputes
- Disengagement letters

Joe's Case Questions to Consider

- Who is your prospective client?
Joe? Sarah?
- Will you accept this client if he can pay your rate
(assuming no conflicts)?

Joe's Case Questions to Consider

- If you accept Joe as your client, what ethics
rules apply to this situation?
- What will you tell Sarah?
- Who else may you want to speak with? What permission, if any,
do you need from your client to speak with anyone else?

Joe's Case Questions to Consider

- Will you agree to draft documents for Joe appointing his aide as agent under a Power of Attorney? Why or why not?
- What factors would you consider?

Solutions

- Preparation
 - Power of Attorney and other estate planning (Trusts)
- Learning about and employing resources
 - APS
 - Vera House
- Hire an attorney
 - Family Meeting
 - Guardianship



Questions?
