



CENTER FOR LAW AND SOCIAL WORK

Lawyers and Social Workers

Working Together: Resolving Ethical Dilemmas

- EQUAL JUSTICE CONFERENCE 2009
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What is a Back Up Plan

- A back up plan allows you and your family to decide who will care for your children in the event of your illness or death.
- Back up plans keep your family safe.
- Back up plans can be informal; formal written documents; or court ordered

Why is Back Up Planning Necessary?

- Maintain the medical card for the child
- Legal follow up until the backup plan is complete in court
- Protect the continuation of the subsidy
- Security and peace of mind

Legal Planning Options

- Short term guardianship forms
- Stand by guardianship
- Stand by adoption
- New guardianship order
- New adoption order

CLSW Original Model

- Family Matters Project
 - Backup Planning for Older and Ill Adoptive Parents, Legal Guardians, and Grandparents Raising Grandchildren
 - Home Visits
 - Lawyers and Social Workers Together as a Team

Underlying Differences Between Lawyers and Social Workers

Lawyers

- Traditionally trained in problem solving or problem prevention.
- Individual clients.
- Advocate for express wishes of client, regardless of attorney's personal opinion of those wishes.

Social Workers

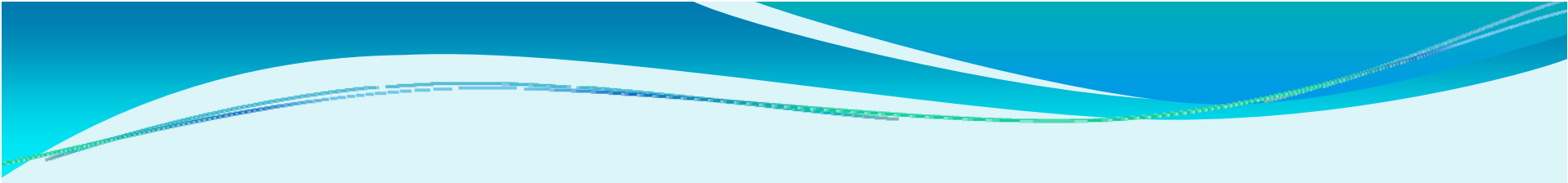
- Trained to fully understand the context of problems before identifying plan or treatment.
- Client may be the entire family and other persons who have major roles in client's life.
- Solve problems based on total circumstances, not just the client's wishes.

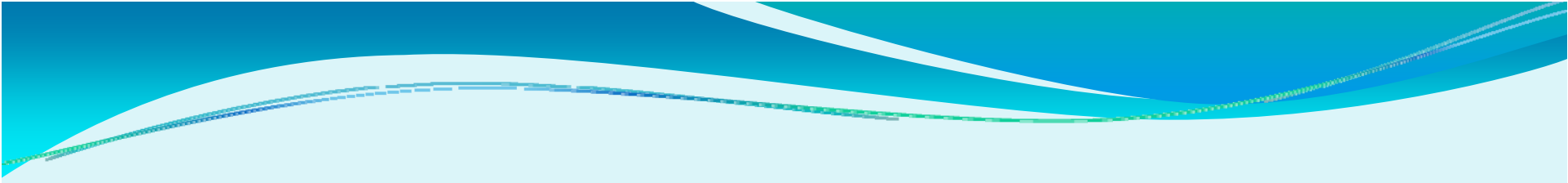
Potential Problem:

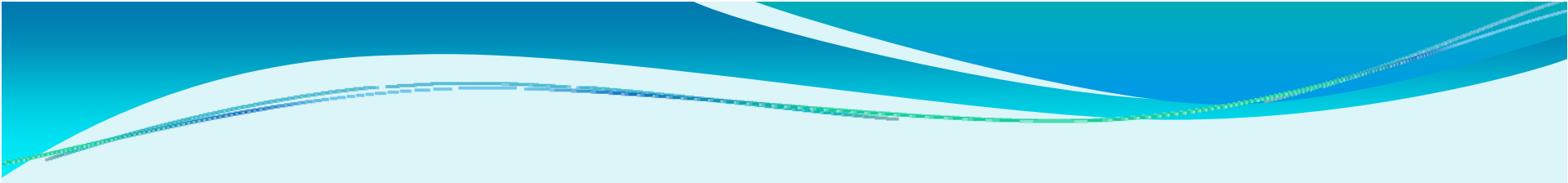
- Lawyer's professional requirement to zealously advocate for the client's wishes may conflict with the social worker's duty to safeguard the best interests of everyone involved.

Case Example 1

- Marla is a 60-year-old single adoptive parent of six children, ages 10-17
 - Five children are bio. sibs from maternal side; One child is paternal great nephew
- Marla becomes ill and is hospitalized; in and out of a coma; on a respirator.
- Marla had chosen her daughter Ella to be the back-up caregiver for all six children.

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- Initial meeting was at the hospital with Marla (unable to communicate), Ella, lawyer and social worker.
 - The children were staying with Ella while Marla was in the hospital.
 - According to Ella, the rest of the family was not happy with this plan.
 - Who is the lawyer's client at this point? Social Worker's client?

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- Decision is made to hold a family meeting with all extended family, lawyer and social worker present.
 - It becomes clear that there are a lot of unresolved issues related to the original adoption of the children.
 - Biological mother (whose rights were terminated), is at the meeting and states her wish to have the children returned to her.
 - Biological mother asks the CLSW lawyer to represent her in her attempt to get guardianship of her children.

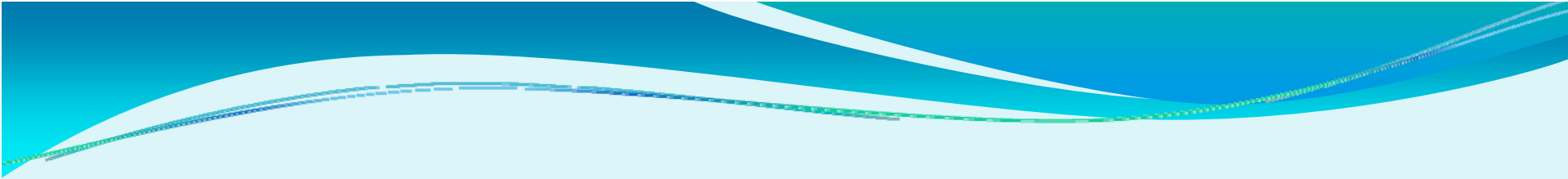
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- Before this case moves any further, Marla dies.
 - Now what?
 - Who's the lawyer's client?
 - Who's the social worker's client?
 - What happens next?

Potential Conflicts

- A. Confidentiality and Attorney-Client Privilege
- B. Mandated Reporting of Suspected Child Abuse
- C. General Conflict of Professional and Ethical Duties

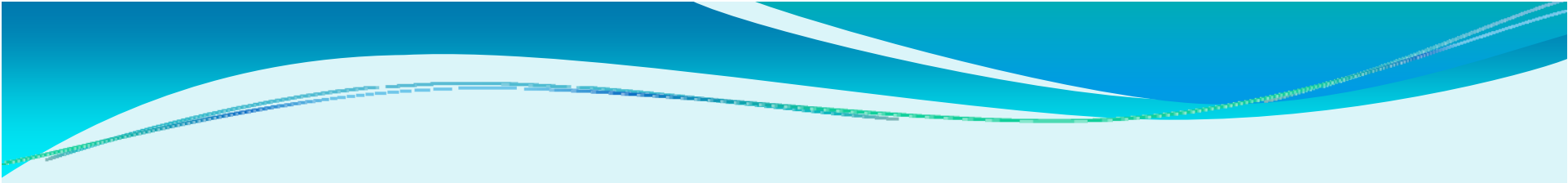
A. Confidentiality and Attorney-Client Privilege

- ABA Model Rule of Professional Responsibility 1.6
 - Generally, an attorney may not use or disclose confidential client information if doing so may adversely affect the client.
- Includes requirement that attorney takes steps “to protect confidential client information against impermissible use or disclosure by the lawyer’s associates or agents.” [Illinois Rules of Professional Conduct, Rule 1.6]
- If social workers are considered agents of the attorneys, same confidentiality rules apply to the social workers.

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- Presence of social workers during attorney-client communications may destroy the protections of attorney-client privilege.
 - If attorney intentionally passes on or exposes attorney-client communication to a social worker, that communication is no longer “in confidence” and no longer privileged unless the social worker is an agent of the attorney and also considered a “privileged person.”

B. Mandated Reporting

- In Illinois, social workers are mandated reporters of suspected child abuse, but attorneys are not.
- If social workers are considered agents of the attorneys, they are bound by same rules of professional conduct as attorney which may “trump” their mandated reporting requirements.
- If an attorney and social worker each learn of potential abuse or neglect, the attorney has a professional obligation to keep the information confidential, while the social worker has a duty to report.

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- Most states have an exception to the confidentiality requirement: In Illinois, “a lawyer shall reveal information about a client to the extent it appears necessary to prevent the client from committing an act that would result in death or serious bodily harm.”
[Illinois Rules of Professional Conduct 1.6(b)]

- A potential conflict still exists:
 - Social workers must report suspected past or future abuse or neglect of any kind.
 - Attorneys must report a suspected future act of abuse which will result in serious harm.
 - This leaves a gap in the area of past abuse or neglect where there is no reason to believe it may occur again.

C. General Conflict of Professional and Ethical Duties

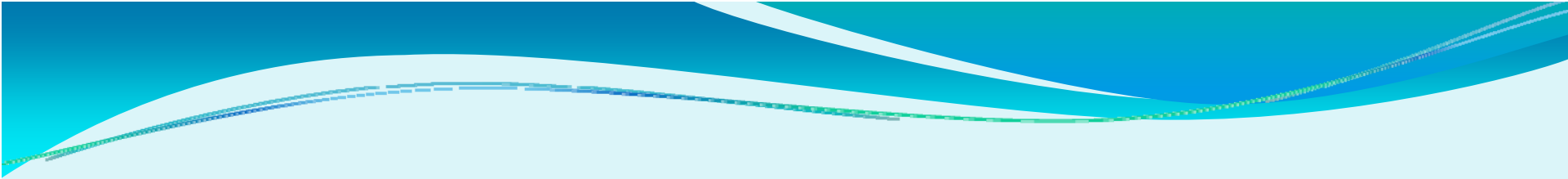
- What if the professional goals for the client conflict?
 - For example, the current caregiver (the attorney's client) wants a backup person whom the social worker believes is unsuitable and not in the best interest of the child or family.
 - Generally, this potential conflict will be resolved by the courts, since most courts are bound by the best interests of the child.

Case Example 2

- Adoptive parent, Anne, is 52 years old and dying of several types of cancer.
- Two minor adoptive children, plus twenty-year-old biological daughter.
- Anne's daughter would like to be the back-up person for her younger siblings. Anne wants her daughter to finish college and not be burdened with raising her sibs.
- After much discussion/debate, Anne decides that the best plan is to separate the children between two relatives.
- The lawyer and social worker are uncomfortable with this plan.

Case Example 3

- Claire is the adoptive parent of two boys, Matthew (14) and Kyle (16). She adopted the boys when they were 8 & 10.
- When the boys began to have increased behavior issues, Claire decided she could no longer handle them and made a plan.
- Claire met Steven, also an adoptive parent and respite care worker, and he agreed to temporarily take the boys.

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- Steven then contacted CLSW because he had no legal rights to the children in his care, but had been taking care of them for two years. Steven contacted CLSW because he had previously worked with one of our attorneys while adopting another child.
 - Who is our client? What are the potential conflicts?
 - CLSW social worker met with Steven and Claire to discuss options.
 - Later, Steven decided he wanted to adopt the boys and asked CLSW lawyers to handle the adoption.

Suggested Models for Minimizing Conflict

- A. Primary Service Provider Model
- B. Confidentiality Wall Model

A. Primary Service Provider Model

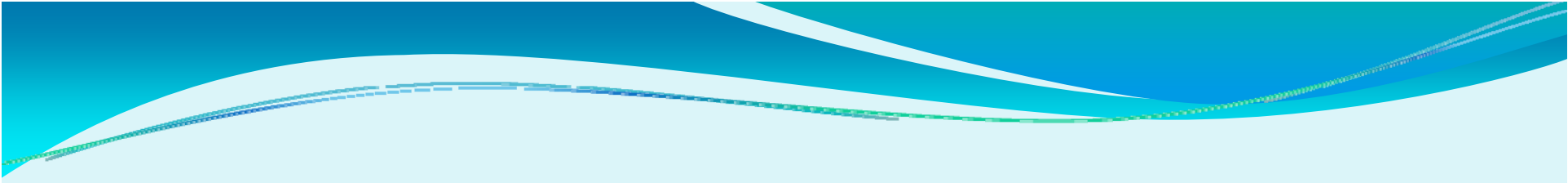
- Follow the general rule that the confidentiality and mandated reporting rules governing the primary service provider will prevail.
 - If legal representation of clients in providing service is the primary objective, the social workers come under the attorney's confidentiality rules and would be prohibited from revealing privileged and confidential information unless the attorneys were permitted or required to do so.
 - If social work services are the primary objective, the social worker codes of conduct would apply.
 - Difficult for groups like CLSW to fulfill their goals under this model if one group is made an agent of the other.

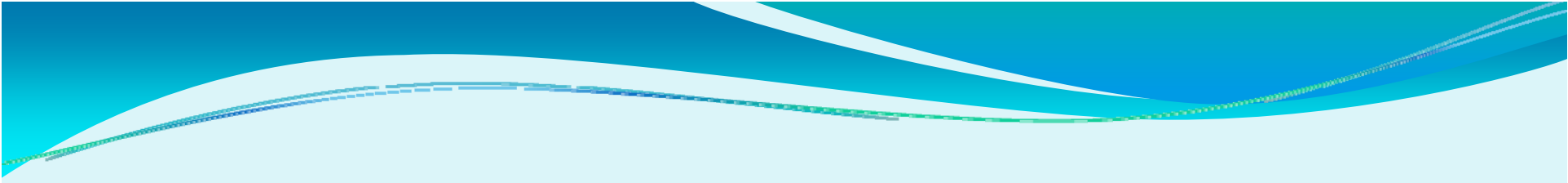
B. Confidentiality Wall Model

- Limited relationship and information sharing between the two professions.
- No confidential information shared between the lawyers and social workers.
- Should prevent social workers from learning about reportable information directly from the attorneys.
- Clients must be given advance notice of the separate roles of the social worker and attorney.

Current CLSW Model

- Social workers meet with the family first.
 - More likely to learn of reportable or other damaging information; ok to report.
 - Minimizes the potential for the attorney to learn of this information first.
- Case is “handed off” to attorney (with client’s permission) when ready for legal plan.
 - Attorney is aware of duty to now safeguard confidential information.
 - Attorney will keep separate, restricted file, with no social work access, for any potentially damaging client information.

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- Clients are given advance written notice that they will be working with both social workers and attorneys.
 - Notice should include description of the separate roles, responsibilities, and privileges of each profession.
 - Center employees must ensure that clients understand the differing legal duties and privileges of each profession, including mandated reporting laws.



For more information,
call the Center for Law and Social Work

312-786-6000

www.centerforlawandsocialwork.com