

APS Legal Practice- Part 2

MARK E. MAVES, ESQ.

AATI 2021 CONFERENCE

Introduction:

Part 2 of Legal Aspects of APS Practice will focus on capacity issues that you may encounter, along with ethical issues in APS legal practice.

Legal Requirements to Determine APS Client Decision Making and Capacity

- ▶ Social Services Law §473 Protective Services
- ▶ 18 NYCRR 457.6 Serving involuntary clients

Legal Issues Related to Capacity

- ▶ Capacity to execute legal documents
- ▶ Involuntary interventions in APS cases
- ▶ Duties of guardians *ad litem*
- ▶ Duties of Court Evaluators
- ▶ Waiver of counsel

Capacity for Executing Various Legal Documents

- ▶ Last Will and Testament
- ▶ Power of Attorney
- ▶ Health Care Proxy
- ▶ Family Health Care Decisions Act
- ▶ Do Not Resuscitate Orders

Capacity and Involuntary Interventions

- ▶ STIPSO
- ▶ MHL Art. 81 guardianship
- ▶ SCPA Art. 17-a guardianship

Capacity and Involuntary Interventions- STIPSO

Short Term Involuntary Protective
Services Order
(STIPSO)

Capacity and Involuntary Interventions- Art. 81 Guardianship

Mental Hygiene Law Article 81 Guardianship of Person and/or Property

MHL §81.10 Counsel

Capacity and Involuntary Interventions-17-a

Surrogate's Court Procedure Act Article 17-a

§1750. Guardianship of persons who are intellectually disabled

§1750-a. Guardianship of persons who are developmentally disabled

Assessing Capacity

Informal Assessment
Formal Assessment

**98-OCFS-INF-05 Mental Health Referral
Instrument**

Lack of Capacity as Disability

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Example- Fair Housing Act

Guardian ad Litem

Guardian ad Litem

- ▶ CPLR Article 12
- ▶ Surrogates Court Procedure Act 17-a
- ▶ NYC Civil Court: *Guardian Ad Litem Program*

Ethical Issues in APS Legal Practice

Ethical dilemmas

- ▶ Based upon our client's ethical relationship with their own clients
- ▶ Based upon attorney- client relationships
- ▶ Based upon representing an agency

Client Ethics

NAPSA Code of Ethics

NAPSA Practice Guidelines

Attorney Ethical Rules

Attorney Ethical Rules

NEW YORK RULES OF PROFESSIONAL
CONDUCT (Effective April 1, 2009)

Attorney Ethical Rules

PREAMBLE: A LAWYER'S RESPONSIBILITIES

Attorney Ethical Rules

RULE 1.1: COMPETENCE

Attorney Ethical Rules

**RULE 1.2:
SCOPE OF REPRESENTATION AND
ALLOCATION OF AUTHORITY BETWEEN
CLIENT AND LAWYER**

Settling cases- who decides?

What do you do if you and the client can't agree on how to resolve a case or on the means to handle the case?

Ethical rules- communication with client

RULE 1.4: COMMUNICATION

Decision making authority

Who Decides on What Course of Action to Take
in a Case?

Attorney as advisor

RULE 2.1
ADVISOR

Non-Meritorious Claims and Contentions

RULE 3.1.

Non-Meritorious Claims and Contentions

Who is the AIP's Attorney Representing?

New York State Bar Association Committee on
Professional Ethics Opinion 986 (10/25/13)

The Organization as the Client

**RULE 1.13:
ORGANIZATION AS CLIENT**

Client With Diminished Capacity

RULE 1.14:

CLIENT WITH DIMINISHED CAPACITY

Matter of S.B (E.K.), 66 Misc.3d 452 (Supreme Court, Chemung County, 2019).

Ethical Issues in the Courtroom

RULE 3.3: CONDUCT BEFORE A TRIBUNAL

Communicating With Unrepresented Persons

RULE 4.3: COMMUNICATING WITH UNREPRESENTED PERSONS

The lawyer as witness

RULE 3.7: LAWYER AS WITNESS

Ethical Opinion

How the “Facts” Can Influence an Ethical Opinion

New York State Bar Association
Committee on Professional Ethics
Opinion 1083 (1/21/16)

Ethical Issues That may Affect a County Attorney, DSS Attorney
or an Attorney who Contracts With an LDSS

New York State Bar Association Committee on
Professional Ethics
Opinion 1153 (5/24/2018)

Ethical Issues That may Affect a County Attorney, DSS Attorney
or an Attorney who Contracts With an LDSS

New York General Municipal Law §801 Conflicts of Interest Prohibited

Ethical Issues That may Affect a County Attorney, DSS Attorney
or an Attorney who Contracts With an LDSS

New York State Bar Association *Committee on
Professional Ethics*

Opinion 1074 (11/13/15)

Ethical issues that may affect a County Attorney, DSS Attorney
or an attorney who contracts with an LDSS

New York State Bar Association Committee on
Professional Ethics
Opinion #859 (03/25/2011)

Ethical issues that may affect a County Attorney, DSS Attorney
or an attorney who contracts with an LDSS

New York State Bar Association Committee on
Professional Ethics

Opinion 1148 (4/2/2018)

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Questions?