

Creating and Maintaining an Ethical Program

Ethics in the Family Law Facilitator's Office and Courtroom

Your Presenters

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Format for Today's Class

- Hypotheticals
- Group Discussion
- Surveys
- Review Applicable Rules
- Identify and Discuss Various Ethical Situations

Ethical Issues for Discussion

- Ex Parte Communication with Bench Officers
- Neutrality
- Determining the Self-Help Scope
- Competence
- Impropriety and/or the appearance thereof
- Legal Advice v. Legal Information
- Integrity and Independence

Please refer to the accompanying handout for Rules, Tenants, and Code Sections to be discussed regarding these issues as they relate to the following hypotheticals.

Basic Fact Pattern

During a busy outside motion calendar, a case worker from the LCSA is present to take notes on the IV-D child support matters, which are later prepared by staff at the LCSA. An attorney from the Family Law Facilitator's Office is also present, to take notes on any matters not handled by the LCSA. In addition, the FLFO attorney answers questions for litigants, explains orders and assists with forms that the Commissioner needs to resolve the matter.

Potential Issues

- Reduced staffing within the office on court days may limit services to litigants wishing to seek assistance outside of court.
- Providing services in court may encourage litigants to come to court unprepared because they know that assistance will be provided.
- Working alongside DCSS staff may give the impression that the FLF is not neutral.
- Familiarity with courtroom staff may create appearance of ex parte communication.

Hypo 1

A hearing in a private UPA case results in entry of a parentage judgment. DCSS has closed their case, so FLFO is instructed to prepare the judgment. The judgment is prepared and submitted to the Commissioner for signature before copies are mailed to the parties. Four weeks later, the case is back on calendar for a financial review, but the parents are complaining about errors in the judgment regarding parenting time, the spelling of the child's name and payment of birth expenses.

Potential Issues

- Poor reflection on the court
- Undermines the court's credibility
- Wastes court time
- Makes correction of clerical errors a courtroom issue
- Shifts the burden of ensuring the order is accurate from the party to the court

Hypo 2

A CP has brought her paycheck stubs to court as instructed, but the LCSA attorney notices that the social security number has not been redacted. He refers her to the FLF who explains the problem to the CP, then assists in redacting the social security number from the documents. The NCP has also brought paystubs, but did not complete an I&E Dec. After calling the case, the Commissioner decides to trail it so the FLF can help the NCP with the form. The NCP objects, based upon the interaction he observed before the hearing between the FLF and the CP.

Potential Issues

- Neutrality
- Time
- Accuracy
- Appearance of attorney/client relationship
- Lack of adequate disclosure
- Need to clarify roles

Possible Solutions

- a) Have the CSA refer all deficiencies to the FLF
- b) Have the FLF meet with all parties before the calendar call and identify/correct deficiencies
- c) Continue matters with form deficiencies and provide assistance outside of court
- d) Proceed with the hearing despite the deficiencies

Hypo 3

Before the Commissioner takes the bench, the attorney surveys the audience to determine which parties are present and ready to proceed. On one case, both parents are present, but cannot agree on the issues before the court. The attorney meets with them and compiles a list of the issues each of them wants the court to address that day. He then reviews the court file to determine whether these issues were raised in the motion. He then briefs the clerk on the unresolved issues that were raised in the motion, as well as an additional issue that both parents wish to discuss with the commissioner but which was not raised in either of their pleadings.

Possible Solutions

- Explain role
- Meet with the parties together
- Summarize findings with parties before presenting to the court
- Address the court on the record
- Do not participate beyond the presentation of issues

Hypo 4

At the hearing, the NCP presents a child support calculation that he would like the court to adopt. The CSA and Commissioner have questions about the figures used in the calculation. The NCP indicates that the FLF present was the one to prepare the calculation and asks that the questions be directed to her.

Potential Issues

- FLF has become a witness to the case
- NCP does not understand his own position
- The FLF's role is not clear
- FLFs are not allowed to keep records on individual litigants/cases, as would be required to testify to the facts behind the calculation

Possible Solutions

- a) Different FLF in court
- b) Better disclosure of FLF role in running support calculations
- c) Train litigants to run their own calculations
- d) Run new calculation in Court

Hypo 5

In order to increase the number of matters resolved at the first appearance, the commissioner has asked the FLFO to provide two staff people during the outside motions calendar. In order to do so, the FLFO must partially close down and limit other services available to litigants dropping into the FLFO during the calendar.

Potential Impacts

- Improved courtroom flow in the short term
- Reduction in out of court services
- Longer waits for assistance
- Less advance preparation by litigants
- Greater need for courtroom services

Hypo 6-Basic Facts

A week before each calendar, a staff person from FLFO reviews each file to outline the issues and the procedural history and to determine if the necessary financial forms and POS have been filed. Deficiencies are noted and the staff person contacts the parties to urge them to file the missing or incomplete documents.

Potential Impacts

- Enables matters to proceed without continuances if there are no objections
- Ignores filing deadlines
- Provides inadequate notice to the judge and the other parties
- Parties may attempt to treat the call as an opportunity to ask questions, seek assistance or offer explanations/excuses

Hypo 6 (a)

At a hearing on CP's motion to modify child support, NCP objects to the late-filed I&E from CP. When the commissioner suggests that the deficiency be overlooked so the matter can be resolved, the NCP states that when he brought a motion before another judge, the hearing was continued and he had to re-serve the CP because he did not get it right the first time. He objects to her motion being treated differently and claims that the court appears to be favoring the mother.

Available Options

- a) Continue the hearing
- b) Trail the hearing to allow the parties time to review the documents
- c) Note the objection and proceed
- d) Disallow the late filed documents

Hypo 6 (b)

At the beginning of each matter, the commissioner calls upon the FLF to state the issues and provide a brief summary of prior and current orders. He lists just the issues raised in the moving papers and does not include extra issues raised for the first time in the responsive declaration. At the conclusion of the hearing, the responding party asks about the issues he raised in his responsive declaration and wants to know why they have not been addressed.

Hypo 7, part 1

An NCP appears without an attorney and is visibly intimidated by the CP's attorney. The FLF, recognizing his unease, engages the litigant in a brief conversation. She explains what will happen at the hearing (procedurally) and points to the table where the NCP should sit when his case is called. She instructs him to direct all of his comments and questions to the judge only and not to interrupt when the CP or her attorney are speaking. NCP has a notepad with a list of the issues he wants the court to address and asks if he can take it to the table with him. The FLF encourages him to do so and further suggests that he use it to take notes on the things he wants to say when it is his turn to speak.

Hypo 7, part 2

The hearing results in a slight upward modification of NCP's child support, but far less than the amount requested by CP. As she storms out of the courtroom with her attorney, the CP can be heard by all as she loudly proclaims that the process was not fair because the court provided NCP a free attorney and she, a working mom and the primary support of her children, had to hire her own attorney.

Available Options

- a) Ignore the comment and change nothing.
- b) Send the bailiff after her to address the behavior.
- c) Send the FLF to talk with the CP and her attorney.
- d) Re-call the case and allow for further evidence/argument.

Hypo 8

The FLF sits in court, but does not interact with the litigants. Instead, she answers questions from the clerk. During any recess in the calendar, she goes in the back office with the clerk and the commissioner, where she is sometimes asked procedural questions about the cases, based upon her review of the files. After a brief recess, the commissioner calls a hotly contested child support modification. After making an upwards modification, the NCP objects that the CP was helped by the FLF and the NCP believes that the FLF told the judge to increase his child support during the recess.

Available Options

- a) Provide a disclosure at the beginning of the calendar about the FLF's role in court
- b) Not allow the FLF to speak with staff in the courtroom
- c) Only allow the FLF to speak with the clerk, not the judge
- d) Have the FLF remain in the courtroom when the judge takes a recess

Hypo 9

A litigant comes to the FLFO with a minute order from a court hearing that just finished. At the bottom of the minute order is a handwritten note instructing the litigant to go to the FLFO for assistance with some additional forms. When FLFO staff tells the litigant that the assistance she seeks is offered in a workshop and offers her an appointment, she becomes upset and insists that the judge "ordered" her to come and receive assistance immediately.

Available Options

- a) Help her on the spot
- b) Explain why help cannot be provided on the spot
- c) Send her back to the courtroom
- d) Turn her away

Available Options

- a) Educate the judges and the clerks about the services you provide
- b) Reallocate staff to provide this service during calendars
- c) Explain available services/workshops at the beginning of calendars
- d) Confer with the bench re priorities and how best to maximize limited FLF resources

Closing Thoughts

- Most ethical dilemmas can be avoided through careful planning
- Know your ethical parameters
- Err on the side of neutrality
- Always look at the big picture
- Get a second opinion
