



# Unaccompanied Children and Ethics- A Practical Guide

Rome Gonsoulin and Alexandria Gomez with the Catholic Charities  
Cabrinian Center

# Caveat!

- ▶ **This is a practical guide about how to confront the most common ethical dilemmas faced by attorneys representing UCs using the ethics rules.**
- ▶ **Attorneys interpret the rules differently at times. This presentation is meant to serve as a guide.**
- ▶ **Remember to move forward with a sense of urgency when facing these issues. You must act either within a reasonable time or immediately depending on situation.**
- ▶ **Read the comments in the Texas Disciplinary Rules of Professional Conduct for guidance. Don't forget the definitions!**



# Suicidal Ideations and Self-harm (In Shelter)

- **Minors who reveal suicidal ideations or self-harm *in shelter*. Texas Family Code 261.101(a).**
  - Safety of the child is the number one priority.
    - Do not leave child alone.
    - Take immediate action.
  - Explain confidentially and exceptions to confidentiality beforehand.
  - Ask the child why they are self-harming (this could indicate ongoing abuse or neglect).
  - Report to ORR staff.
    - Take a trauma informed approach.
  - Make a CPS report.
  - How to continue effective representation? Advocacy and vigilance.
- **Possible consequences (avoidable or unavoidable):**
  - One on one supervision (ratio)
  - Reunification delays (due to CPS investigation)
  - Increase in the number of Court appearances (due to prolonged detention)
  - Transfer to different facility or Residential Treatment Facility (RTC)

# Suicidal Ideations or Self-Harm, or Abuse or Neglect After Release from Shelter

- **Clients who reveal suicidal ideations, self-harm *after release from detention (minors)*.**
  - What to do if under 18? CPS Report per **Tex. Fam. Code. 261.101 Persons Required to Report: Time to Report. 261.001(1) Definitions (Abuse) and 261.001(4) (Neglect). Review abuse and neglect statutes.**
  - **What may happen:**
    - 1) CPS moves the kids to CPS care;
    - 2) CPS determines that the kids are not in immediate danger after an investigation, the kids stay with sponsor and CPS will check in with them to ensure their safety (Parenting classes or other services may be offered);
    - 3) CPS/CPS social services may ask if there is another relative the Child can live with; or
    - 4) Child may end up back in ORR custody <https://www.acf.hhs.gov/orr/outreach-material/office-refugee-resettlement-national-call-center>
- Over 18 years old. Remember Confidentiality and the exceptions. **TDRPC 1.05(c)(10), 1.05(e) also see Tex. Fam Code. 261.101 Persons Required to Report.**
- Quick note on runaways. **Tex. Fam. Code. 261.101 Persons Required to Report: Time to Report. 261.001(1) Definitions (Abuse) and 261.001(4) (Neglect).**

# Abuse in Shelter by an ORR Staff Member

- **Minors who reveal they have been/are being assaulted or abused by a shelter staff member. TFC 261.101 Persons Required to Report: Time to Report. 261.001(1) Definitions (Abuse) and 261.001(4) (Neglect). Review abuse and neglect statutes. ORR Policy - Children Entering the United States Unaccompanied: Section 4.**
  - Safety of the child is the number one priority.
    - Do not leave child alone.
    - Take immediate action.
    - Ensure protective measures from the alleged abuser.
  - Explain confidentially and exceptions to confidentiality beforehand.
  - Report to ORR staff and FFS.
    - Take a trauma informed approach.
  - Make a CPS report.
    - Get enough information for an initial report.
    - Results: investigation, police report/interview.
  - How to continue effective representation? Advocacy and vigilance.
  - How to get information from ORR? [ORR Policy 4.10.4](#)
    - Minors over 14 and under 14- Notification of Counsel of abuse.
  - How will this affect their legal case? Counsel on U visa.
- **Possible consequences (avoidable and unavoidable)**
  - One on one supervision (ratio).
  - Reunification delays due to CPS investigation.
  - Increase in the number of Court appearances due to prolonged detention.
  - Transfer to different facility or Residential Treatment Facility (RTC).
- **\*Quick note on minors who frequently accuse staff of abuse.-Counsel Client.**

# Abuse by Another Minor while in Shelter

- **Minors who reveal they have been assaulted or abused by another minor(s) in the shelter? TFC 261.101 Persons Required to Report: Time to Report. and TDRPC 1.05 Confidentiality of Information. 1.09 Conflict of Interest: Former Client. 1.15 Declining or Terminating Representation. 261.001(1) Definitions (Abuse) and 261.001(4) (Neglect). Review abuse and neglect statutes.**
  - Safety of the child is the number one priority.
    - Do not leave child alone.
    - Take immediate action.
    - Ensure protective measures from the alleged abuser.
  - Explain confidentially and exceptions to confidentiality beforehand.
  - Report to ORR staff and FFS.
    - Take a trauma informed approach. Allow minor to have input into how and who.
    - Call in a supervisor (lead case manager, program director, or assistant lead).
  - Make a CPS report.
    - Get enough information for an initial report.
  - CPS investigation: investigation, police report/interview.
  - Manage conflicts of interest: Make an LSP referral. **TDRPC 1.06 Conflict of Interest: General Rule.**
  - Counsel on U visa depending on details of case. \*Do not interfere with CPS investigation.
  - How to continue effective representation? Check in with minor.
- **Possible consequences (avoidable and unavoidable)**
  - One on one supervision (ratio).
  - Reunification delays due to CPS investigation.
  - Increase in the number of Court appearances due to prolonged detention.
  - Transfer to different facility or Residential Treatment Facility (RTC) or minors.

## Former Gang Members and/or Minors with Violent Pasts. Revelations in Shelter.

- **Minors who reveal they are gang members in shelter or reveal violent pasts or aggressive thoughts or actions. TFC 261.101 and TDRPC 1.05 Confidentiality of Information 261.001(1) Definitions (Abuse) and 261.001(4) (Neglect). Review abuse and neglect statutes.**
  - What to do? Get details.
  - Check Confidentiality rules. Check if the information falls within an exception for revealing the information.
  - Aggressive thoughts or actions? Is anyone in danger? Is the child a danger to themselves?
  - What will happen if/when they/you reveal? One on one supervision/ratio. Reunification consequences (home study) extended stay in detention, more court hearings as a result. Significant incident reports (may cause further reunification delays).
  - How to counsel the client? Encourage them to speak with a clinician. You can also request they see a clinician more often than the standard amount of time per week.
  - Remind the minor that if they are violent, the shelter staff may call the police.
  - Grey areas? Requesting one on one supervision—\*\*Caveat.

# Over 18 in Shelter

- **Minors who reveal they are over 18 in shelter. 261.101 Persons Required to Report: Time to Report. Rule 1.02. Scope and Objectives of Representation 1.05 Confidentiality of Information. 261.001(1) Definitions (Abuse) and 261.001(4) (Neglect). Review abuse and neglect statutes.**
- Confidentiality vs. Duties to other minors.
  - Duty to protect children.
  - Assisting in a fraudulent act **TDRPC 1.05(c)(7) Confidentiality of Information, 1.02 Scope and Objectives of Representation (1.02(c) and 1.029(e). Rule 4.01 Truthfulness in Statements to Others.**
  - Persuading client to disclose age.
  - Easier to rehabilitate credibility if age is corrected sooner.
  - Is there a conflict between duty to disclose and client's best interest?
- Age Redetermination.
- How to counsel the client? Adult detention talk.

# Disclosure of Past Lies

- **Minors who reveal they *have* lied in court or to USCIS TDRPC 1.02. Scope and Objectives of Representation. 1.05 Confidentiality of Information. 3.03 Candor to the Tribunal, 4.01 Truthfulness of Statement to Others.**
- What do I do? First, figure out what happened and why the client lied.
  - Confirm where the false information was used/presented. USCIS the Court, DHS, etc.
  - Material fact vs. non-material fact.
  - How should I counsel the client? Ask if they agree to rectify. Create a plan with client about how the disclosure will occur if they agree. If they are not in agreement, check the confidentiality rules to confirm whether you must disclose the information and to whom.
  - Should I withdraw from the case? Depends on if they are willing to rectify or not and also consider your contract. Also see **Declining or Terminating Representation 1.15 (d)**
  - Explain your duties and obligations as an attorney and the rule of candor to the tribunal to your client.
  - How to rectify? Depends on the specific situation. The correct information will need to be presented to the appropriate parties.
  - Explain the impact on credibility.
  - Explain possible criminal repercussions if they are known to you, or make it clear they may need to seek a criminal defense attorney for a detailed counsel depending on the severity of the lie/fraud.
  - Should they find another attorney?

# Client Indicates They will Lie in the Future

- **Minors who reveal they are planning to lie in Court or to USCIS. TDRPC 1.02. Scope and Objectives of Representation (1.02(c), 1.02(d), 1.02(e). 1.05 (including 1.05(e)) Confidentiality of Information. 3.03 Candor to the Tribunal, 4.01 Truthfulness of Statements to Others.**
- Find out why they wanted to lie? Family pressure, desperation, etc.
  - Counsel client about duties and responsibilities as an attorney (Candor toward the tribunal, truthfulness of statements to others)
  - Explain Credibility
  - Explain Perjury and the consequences
  - Explain your representation/breach of contract
  - Remember, nothing good can come from a lie
- How should I counsel as friend of court?
- Should I withdraw from the case? **1.15 Declining or Terminating Representation (\*note on mandatory withdraw).**

# OTIP Letters/False Information

- **Minors who reveal they lied about the facts of their case and received an OTIP letter based on false facts. TDRPC Confidentiality of Information 1.05(c)(7). TDRPC 1.02. Scope and Objectives of Representation. Rule 4.01 Truthfulness in Statements to Others.**
  - Client must not use any check from the government they received after OTIP certification.
  - If you did not make the OTIP recommendation, alert the person who did.
  - How will it affect their legal case? URM Program withdrawal.

# Indecision

- **Indecision: Minors who cannot make a decision in their legal case (ie: cannot decide between Voluntary Departure v. Removal Order or cannot decide on a Continuance v. VD). Rule 1.16. Clients with Diminished Capacity.**
  - How will the indecision affect their legal case? Non-decision can cause a decision.
  - How do I move forward without an express decision from my client? Leave them in the same place or better place. Ask for a continuance. Request Child Advocate or guardian ad litem.
  - Make a child advocate referral if possible. What can help them decide? Bring in another colleague. Are there trust issues? Do they need more information or visual aids?
  - Give them ample time to decide.
  - Be empathic- understand that children are being asked to make adult decisions.
  - Be honest about your opinions-- Such as with PD requests (termination v. final hearing on the merits).
  - Also see, **Rule 1.02. Scope and Objectives of Representation**
- **Rule 1.03. Communication**
  - (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
  - (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

# Voluntary Departure and Ethics

- **Voluntary Departure when there are significant safety concerns in home country.**
  - Are you the attorney of record, friend of court, or child advocate?
  - Does the child have diminished capacity?
  - Expressed interest vs. best interest.
- **Rule 1.16. Clients with Diminished Capacity**
  - (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for another reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
  - (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken, and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action. Such action may include, but is not limited to, consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, attorney ad litem, amicus attorney, or conservator, or submitting an information letter to a court with jurisdiction to initiate guardianship proceedings for the client.
  - (c) When taking protective action pursuant to (b), the lawyer may disclose the client's confidential information to the extent the lawyer reasonably believes is necessary to protect the client's interests.

# Additional Ethics to Remember from the Texas Disciplinary Rules of Professional Conduct

▶ **Rule 1.01. Competent and Diligent Representation**

(a) A lawyer shall not accept or continue employment in a legal matter which the lawyer knows or should know is beyond the lawyer's competence, unless:

- (1) another lawyer who is competent to handle the matter is, with the prior informed consent of the client, associated in the matter; or
- (2) the advice or assistance of the lawyer is reasonably required in an emergency and the lawyer limits the advice and assistance to that which is reasonably necessary in the circumstances.

▶ **Rule 5.01. Responsibilities of a Partner or Supervisory Lawyer**

A lawyer shall be subject to discipline because of another lawyer's violation of these rules of professional conduct if:

- (a) The lawyer is a partner or supervising lawyer and orders, encourages, or knowingly permits the conduct involved; or
- (b) The lawyer is a partner in the law firm in which the other lawyer practices, is the general counsel of a government agency's legal department in which the other lawyer is employed, or has direct supervisory authority over the other lawyer, and with knowledge of the other lawyer's violation of these rules knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of the other lawyer's violation.

▶ **Rule 5.02. Responsibilities of a Supervised Lawyer**

A lawyer is bound by these rules notwithstanding that the lawyer acted under the supervision of another person, except that a supervised lawyer does not violate these rules if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional conduct.

# More Important Rules.

▶ **Rule 3.01. Meritorious Claims and Contentions**

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes that there is a basis for doing so that is not frivolous.

▶ **Rule 3.02. Minimizing the Burdens and Delays of Litigation**

In the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter.

▶ **Rule 5.03. Responsibilities Regarding Nonlawyer Assistants**

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure

that the person's conduct is compatible with the professional obligations of the lawyer; and

(b) a lawyer shall be subject to discipline for the conduct of such a person that would be a violation of

these rules if engaged in by a lawyer if:

(1) the lawyer orders, encourages, or permits the conduct involved; or

(2) the lawyer:

(i) is a partner in the law firm in which the person is employed, retained by, or associated with; or is the general counsel of a government agency's legal department in which the person is employed, retained by or associated with; or has direct supervisory authority over such person; and

(ii) with knowledge of such misconduct by the nonlawyer knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of that person's misconduct.

# Finally.

- ▶ **Rule 5.05. Unauthorized Practice of Law**

A lawyer shall not:

- (a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or
- (b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

- ▶ **Rule 6.05. Conflict of Interest Exceptions for Nonprofit and Limited Pro Bono Legal Services**

- ▶ **Rule 8.04. Misconduct.**



# Take Away Points

- ▶ **Attorneys interpret the rules differently at times. Consult with supervisors, colleagues, etc. Don't panic, though it is easy to become overwhelmed by ethical dilemmas, seek guidance and assistance when necessary.**
- ▶ **Double check your contract.**
- ▶ **Triple Check confidentially. If you are going to reveal confidential information per the ethics rules you need to perform a detailed analysis.**
- ▶ **Consider how to protect a client's interest.**
- ▶ **Remember to be empathetic.**
- ▶ **Have a sense of urgency!**
- ▶ **Trust your instincts (inner lawyer).**
- ▶ **Refer to the Texas Disciplinary Rules of Professional Conduct.**
- ▶ **Texas Ethics Hotline 800 532 3947.**

# The End

- ▶ Thank you!
- ▶ For Questions:
- ▶ [Rgonsoulin@catholiccharities.org](mailto:Rgonsoulin@catholiccharities.org)
- ▶ [agomez@catholiccharities.org](mailto:agomez@catholiccharities.org)