

**3RD REGIONAL GLACE EXTERNSHIP
SUPERVISION FORUM
PRACTICAL EXTERNSHIP ETHICS**

Professor William Wesley Patton

Several students at GLACE Law School have enrolled in externships this semester. **Abe** is at the Children’s Law Center [**CLC**] which represents abused children in child dependency proceedings. **Barbara** just finished an externship at Los Angeles Dependency Lawyers [**LADL**], a non-profit firm that represents parents in child dependency proceedings, and she now is enrolled in an externship with the District Attorney [**DA**]. **Charles** has enrolled in an externship with Judge Dawn in the Los Angeles dependency court system. Abe, Barbara, and Charles are all enrolled in *Professor Tower’s* externship classroom component in which they are required to keep a journal of their experiences and to participate in class discussions regarding their observations of their various externship experiences.

1. On the first day of class Abe raised his hand and asked, “Professor Tower, my child client just informed me that his father hit him with a skull-shaped belt buckle. What should I do?” Although Professor Tower quickly indicated that students should not disclose the identifying facts of cases that they are working on, it was too late because Barbara was already startled by Abe’s description of the belt that sounded like the one allegedly used by a father that she had help defend in her previous externship at **LADL**.

2. Two weeks later, Charles was provided a case by his judge that involved facts regarding an allegation of a father hitting his child with a belt with a skull shaped buckle. He made an appointment to speak with Professor Tower.

3. **CLC** has three separate offices so that it can represent multiple siblings in child abuse cases without creating a conflict of interest. Abe was assigned to Office #1. However, one day his supervising attorney was not present, and he had a question regarding whether the office should be arguing for a child’s stated preference of returning home or whether the office should instead argue for the child to be placed in foster care if they concluded that the child needed protection. While Abe was having lunch he asked **Frank Funk**, an attorney in Office #2, whether the office was required to argue that a child hit with a metal skull belt buckle should be returned home just because the child said so. Abe also quickly said that the child indicated that his sister was also threatened with the belt. Frank Funk was very upset when he heard that Abe worked in Office #1 because Frank represents the boy’s sister.

4. Two weeks later at her DA placement, Barbara’s supervisor asked her to investigate the legality of a search of a bedroom that resulted in the discovery of a weapon. Barbara was apprehensive because she had not yet taken *Criminal Procedure*, but she wrote what she thought was an excellent memo that included a detailed discussion of law review articles that the District Attorneys would not have had time to read. However, when she discussed her memo with her supervisor, he said, “Fantastic job. Based upon those law review articles and the cases you cited, I think that we will be able to admit that belt with the skull buckle in our criminal child abuse prosecution.” Her supervisor did not check Barbara’s citation that included three depublished cases.

LEGAL ETHICS RULES AND REGULATIONS

I. CALIFORNIA PRACTICAL TRAINING OF LAW STUDENT REGULATIONS:

A. § 3.3. A law student shall “[h]ave either successfully completed or be currently enrolled in and attending, academic courses in *evidence* and *civil procedure*.”

B. § 7.3. The Supervising Attorney shall “[a]ssume personal professional responsibility for any work performed by the Certified Student while under his or her supervision.”

C. § 7.5. The Supervising Attorney shall “[r]ead, approve, and personally sign” all documents.

II. THE DUTY OF LOYALTY:

In re Kristen B., 163 Cal. App. 4th 1535 (4th Dist. Div. 1, June 18, 2008)

Summary: A 14-year-old girl alleged that her stepfather sexually abused her. She recanted her allegations to her court appointed attorney. At the dependency trial the girl’s lawyer called her to the witness stand and when the girl testified that she did not discuss the case with her mother shortly before trial, her own attorney asked the girl several questions that had the effect of impeaching her testimony such as: “So how can we believe that you didn’t talk about...Sustain my own objection. Argumentative.”

A. *Welf. & Inst. Code § 317 (e)*: “The counsel for the child shall be charged in general with the representation of the child’s interests....In any case in which the child is four years of age or older, counsel shall...advise the court of the child’s wishes....Counsel...may make recommendations to the court concerning the child’s welfare.... Counsel for the child shall not advocate for the return of the child if, to the best of his or her knowledge, that return conflicts with the protection and safety of the child....”

B. *Cal. Rule of Ct. Rule 5.662 (c)* provides: “Appointment [of] a CAPTA guardian ad litem must be appointed for every child who is the subject of a juvenile dependency petition under section 300. An attorney appointed under rule 5.660 will serve as the child’s CAPTA guardian ad litem under section 326.5....”

C. *Rule 5.662 (d)* provides the duties of the CAPTA GAL: “To make recommendations to the court concerning the best interest of the child as appropriate under (e).” Subsection (e) provides the duties of an attorney/GAL are those of §317.

D. In *Burger v. Kemp*, 107 S. Ct. 3114, 3129 (1987), the United States Supreme Court defined an attorney's duty of loyalty to a client as "perhaps the most basic' responsibility of counsel...." See also, *Santa Clara County Counsel Attorneys Ass'n v. Woodside* (1994) 869 P. 2d 1142.

III. SUCCESSIVE v. CONCURRENT CONFLICTS OF INTEREST.

In re Charlisse C., 149 Cal. App. 4th 1554 (2007; REVIEW GRANTED)

Summary: Office #1 of a three-office non-profit law firm represented **Child 1** [now a 19-year-old mother] in a child dependency proceeding. After Child 1 aged out of the system, she had a child, **Child 2**, and the Department of Child and Family Services brought a dependency petition alleging that the Child1/Mother neglected Child 2. The dependency court appointed an attorney from Office # 3 to represent Child 2 against their former client, Child 1/Mother.

A. *Cal. Bus. & Prof. Code § 6068 (e)* provides that an attorney must 'maintain inviolate the confidence, and at every peril to himself or herself the secrets, of his or her client.'

B. *Metro-Goldwyn-Mayer, Inc. v. Tracinda Corporation* (1995) 43 Cal. Rptr. 2d 327, 331, "Where representation is successive – that is when an attorney is engaged to represent the interests of a party that are adverse to a former client the attorney's – 'courts have recognized that the chief fiduciary value jeopardized is that of client confidentiality.'

C. *CA Rules of Prof. Resp., Rule 3-310(E)*: "A member shall not, without the informed written consent o the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment."