ETHICS AND PROFESSIONALISM 2023

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HOUSEKEEPING

REQUEST

This is a request

We are all friends in this training, but this is not a confidential meeting. Please assume everything you say will be repeated. Conversation about individual cases should be very limited. If you have a specific question, please ask that question in such a way so that a specific case is not identified.



DO YOU HAVE ANY QUESTIONS YOU ARE LOOKING TO HAVE ANSWERED

ETHICS! A CONTINUING PROBLEM



WHAT IS ETHICS?

I.The minimum level of conduct expected of participants in the juvenile justice system.

2. For Social Workers it is ORC 4757, OAC 4757-5 and NASW Code of Ethics.

3. For Attorneys it is the Rules for Professional Conduct.

4. For Judges it is the Rules for the Government of the Judiciary.

Ethics is not the same as feelings.

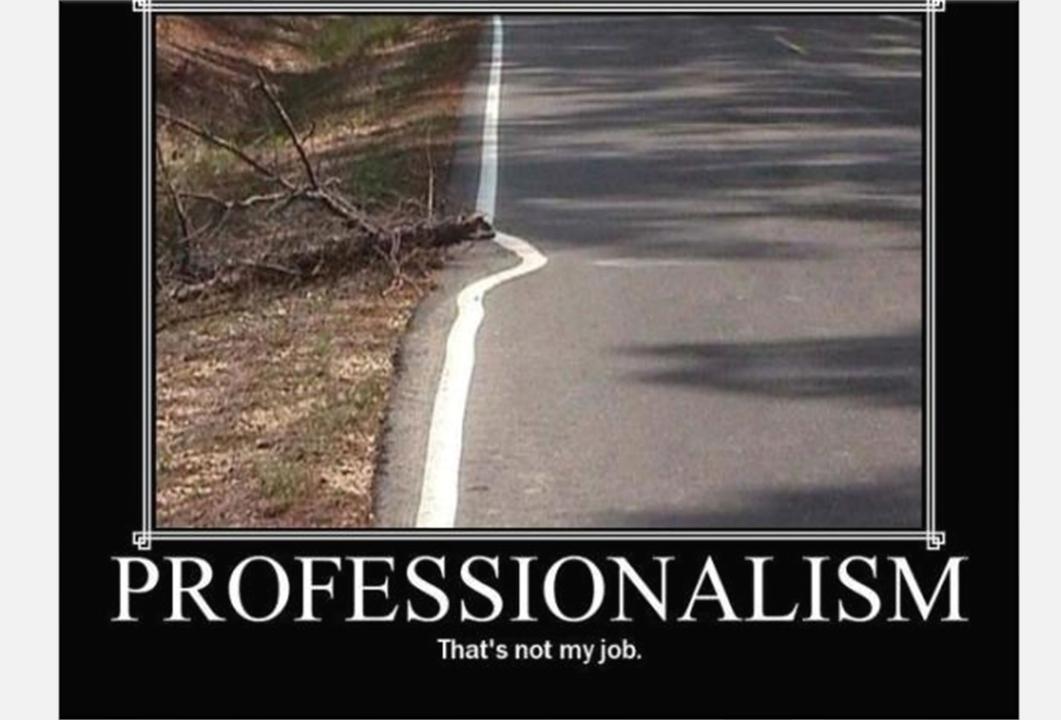
Ethics is not religion.

Ethics is not following the law.

Ethics is not following culturally accepted norms.

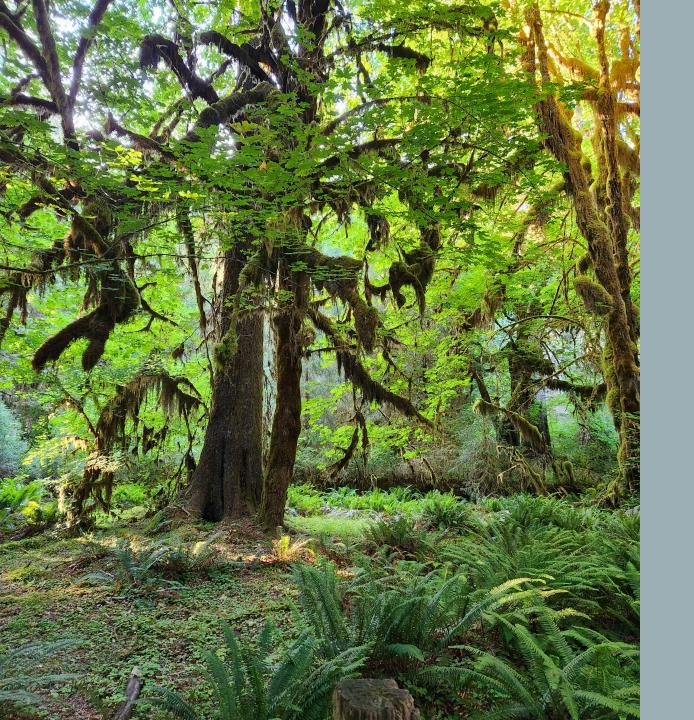
Ethics is not science.

WHAT ETHICS IS NOT



PROFESSIONALISM

- Professionalism is the highest ideals for the conduct of those in juvenile justice.
- A lack of professionalism may or may not be an ethics violation. It is policed by those in the profession.
- Look to the statements of professionalism from the NASW Code of Ethics, Ohio Supreme Court, your employee handbook and the statements of proper conduct from your training and experience.



PROFESSIONAL?



ETHICAL RULES UPDATES

4757-5-02

- Amended 4757-5-02(G)(I)
- Not practice, condone, facilitate or collaborate with any form of discrimination on the basis of
- age, gender identity and expression, sexual orientation, race, ethnicity, national origin, immigration status, disability, religion, language, culture, veteran status, marital status, political belief, housing status, and socioeconomic status.

4757-5-02

- Amended 4757-5-02(G)(2)
- Should obtain education about and seek to understand the nature of diversity with respect to
- age, gender identity and expression, sexual orientation, race, ethnicity, national origin, immigration status, disability, religion, language, culture, veteran status, marital status, political belief, housing status, and socioeconomic status.

COMPARE TO ATTORNEY RULES

- Rule 8.4(g)
- It is professional misconduct for a lawyer to engage, in a professional capacity, in conduct involving discrimination prohibited by law because of race, color, religion, age, gender, sexual orientation, national origin, marital status, or disability.

COMPARE TO JUDGE RULES

- Rule 2.3 Bias, Prejudice and Harassment
- (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.
- (C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

JUDGES RULE

- Rule 3.6(A)
- A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation



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2022-08 A judge should not attend a training course that is offered by a law enforcement agency and open exclusively to judicial officers, prosecutors, and members of law enforcement.

2022-09 A full-time or part-time magistrate may not seek election to, or serve on, a local, city, or state board of education, city council, or county board of commissioners.

2022-10 A magistrate may serve as a trustee of a nonprofit condominium association if the extrajudicial activity does not undermine the magistrate's independence, integrity, or impartiality, lead to frequent disqualification, or interfere with the performance of judicial duties.



2022-11 A lawyer may share office space, computer equipment, and support staff with other lawyers in an office sharing arrangement. A lawyer in an office sharing arrangement may divide fees with another lawyer in the office subject to the Rules of Professional Conduct.

2022-12 A prosecutor may prepare a judgment entry at the direction of a judge. A prosecutor should not engage in subsequent communications with a court about changes or edits to a judgment entry that concern substantive matters or issues on the merits unless opposing counsel is included in the communications.

2022-13 A lawyer may not delegate the task of taking or defending a deposition to a paralegal. An out-of-state lawyer may take or defend a deposition in Ohio so long as he or she meets one of the exceptions contained in Prof.Cond.R. 5.5. An Ohio lawyer may take or defend a deposition in a state outside Ohio in which the lawyer is not licensed to practice law if permitted by that state.

2023-1 A judge may not sign a letter soliciting local businesses to donate items for use as program rewards and incentives for participants in a specialized docket court. A court employee, at the direction of a judge, may not solicit local businesses to donate items for use as program rewards and incentives for participants in a specialized docket court.

2023-2 A nonprofit legal aid lawyer may engage in direct in-person solicitation of an individual who may benefit from representation when the lawyer will receive no fee or remuneration in connection with the representation. A nonprofit legal aid lawyer may send a direct mail solicitation to individuals facing legal action, so long as the lawyer verifies that the individual has been served prior to sending the letter and the lawyer will receive no fee or remuneration in connection with the representation.

2023-3 A mayor's court magistrate is not subject to the Code of Judicial Conduct. A mayor's court magistrate may seek and hold an elected office. A mayor's court magistrate may seek and hold a leadership position in a local or state political party.

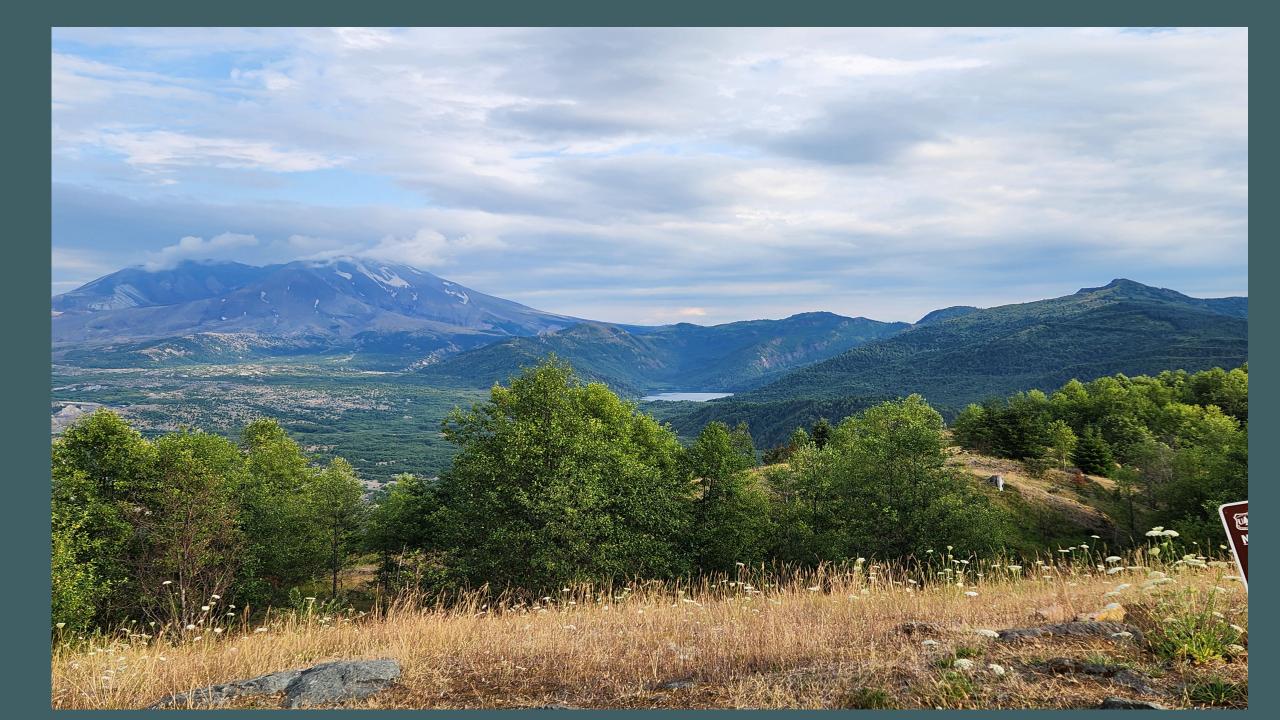
2023-4 A lawyer in receipt of a subpoena duces tecum for a former client's file must promptly notify the former client of the request and seek the client's informed consent to the disclosure of client information contained in the file.

If the former client gives consent to comply with a subpoena duces tecum for the client's file, the lawyer's disclosure of the client's information should be made only to the extent that the lawyer believes is reasonably necessary to comply with the subpoena. If the former client chooses to challenge a subpoena, the lawyer must assert all reasonable claims to limit the disclosure of client information related to the former representation, including, but not limited to, the serving of written objections on the issuing party, the filing of a motion to quash, and the appeal of an adverse court ruling.

If the former client cannot be timely located, the lawyer must assert all reasonable claims to limit the disclosure of client information related to the former representation in response to the subpoena, including, but not limited to, serving objections on the issuing party and filing a motion to quash.

2023-5 The Code of Judicial Conduct does not mandate a judge's disqualification when a lawyer employed by, associated with, or in partnership with the judge's spouse appears before the judge. The determination of whether a judge's impartiality may be reasonably questioned or whether an interest of the judge's spouse may be substantially affected by the outcome of the proceeding is to be made on a case-by-case basis. A judge should disclose to the parties the spouse's employment with the law firm even if there may be no basis for disqualification.

2023-8 The Rules of Professional Conduct prohibit a law firm from adding a clause to its standard employment contract requiring a departing lawyer to pay the firm the quantum meruit value of work completed prior to the lawyer's departure, plus 25 percent of the overall recovery of attorney fees on any transferred cases to reimburse the firm for its advertising costs. The addition of 25 percent of the overall recovery of attorney fees is an impermissible restriction on the departing lawyer's right to practice after termination of the employment relationship. The additional fee is also an impermissible division of attorney fees by lawyers not in the same firm.





REPORT VIOLATIONS





CURRENT ISSUES





BREAKOUT GROUPS

QUESTION #1

CONTACTS

4757-5-3 (B) Counselors, social workers, and marriage and family therapists shall avoid potentially harmful effects of non-client contacts on their practice that would reasonably impair the professional's objectivity or otherwise interfere with the professional's effectiveness as a counselor, social worker, or marriage and family therapist or would reasonably harm or exploit the other party. The standard to be used shall be what an ordinary, reasonable professional with similar education and training would have considered in similar circumstances.

CONTACTS

Rule 1.2 A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

QUESTION #2

MULTIPLE RELATIONSHIPS/CRIMES

4757-5-3. Counselors, social workers, or marriage and family therapists shall avoid multiple relationships and conflicts of interest with any client/consumer-of-services, ex-clients, family members of clients or ex-clients, or other persons encountered in professional or non-professional setting, which are not in the best interest of the client and might impair professional judgment or which increases the risk of client/consumer-of-services exploitation.

4757-5-4 no sexual activities or contact with current or past clients.

RC 4757.36(5) and (7)

MULTIPLE RELATIONSHIPS/CRIMES

Rule 8.4(b) commit an illegal act

Judicial Rules 1.2 A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

QUESTION #3

NOWICKI

Prof. R. 1.7(a)(1) A lawyer's acceptance or continuation of representation of a client creates a conflict of interest if either of the following applies:

(1) the representation of that client will be directly adverse to another current client;

(2) there is a substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by the lawyer's own personal interests.

NOWICKI

I.8(j) A lawyer shall not solicit or engage in sexual activity with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced. A lawyer shall not solicit or engage in sexual activity with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

4757-5-4 no sexual activities or contact with current or past clients.

Judicial Rule 1.2

2023-Ohio-3079

O'DIAM 2022-OHIO-1370, 2023-OHIO-1118

Dad

2.8(b) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

Daughter

4.4(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, harass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

8.4(h) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

O'DIAM

4757-5-02(H) Responsibility to clients/consumers of services as to conduct with clients and other individuals:

(1) Counselors, social workers, and marriage and family therapists shall not physically or verbally abuse or threaten clients family members of clients, ex-clients or other persons encountered in professional settings. Licensees shall be aware that any physical touching between the professional and the client is subject to review for appropriate professional boundaries. The professional shall have the burden of proof to explain why physical touching was professionally necessary.

(2) Counselors, social workers, and marriage and family therapists shall not use derogatory language in their written or verbal communications to or about clients, exclients or family members of clients or ex-clients. Licensees shall use accurate and respectful language in all communications to and about clients and other persons in professional settings.

QUESTION 5

4557-5-02(B) (1) Counselors, social workers, or marriage and family therapists shall inform clients/consumers of services the extent and nature of services available to them, as well as the limits, rights, opportunities and obligations associated with the services to be provided which might effect the clients/consumers of services decisions to enter into or continue the relationship.

(2) Licensees and registrants shall provide services to clients only in the context of a professional relationship based on valid informed consent. Licensees and registrants shall use clear and understandable language to inform clients of the purposes of services, limit to the services due to legal requirements, relevant costs, reasonable alternatives, the clients' rights to refuse or withdraw consent, and the timeframe covered by the consent.

(3) In instances when clients are unable to read or understand the consent document or have trouble understanding the primary language contained in the informed consent document, licensees shall take steps to ensure the client's comprehension including providing a detailed verbal explanation or arranging for a qualified interpreter or translator as needed. If a client because of age or mental condition is not competent to provide informed consent, the licensee shall obtain consent from the parent, guardian, or court appointed representative.

QUESTION 5

Multiple relationship problem?

4th amendment problems?

TERMINATION

Your duty when terminating a client is to

- I. Minimize the adverse effect of the termination
- 2. Make referrals

Attorneys may terminate under Rule 1.16



MANDATORY REPORTER?

2151.421 who is acting in an official or professional capacity Licensee who is impaired.

NEVER USE ALONE HOTLINE

Is this a problem. It is in their personal life.

Kennedy v. Bremerton School District

US Supreme Court Case

4757-5-02

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