



What Matters Most

Ethical Considerations When Advising Parents with Children

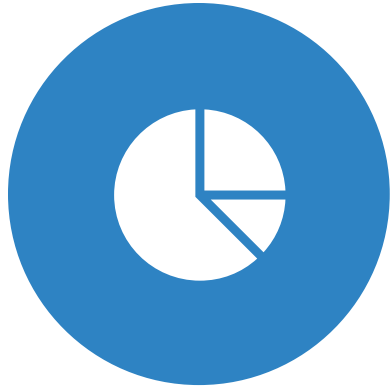
Shaul Goldberg, J.D.
WDA Annual Ethics CLE
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welcome



Today's Roadmap



WHAT WE WILL TALK
ABOUT



WHAT WE HOPE YOU
TAKE WITH YOU



HOW WE WILL SPEND
OUR TIME TOGETHER

What's At Stake for Parents



Every parent facing incarceration is at risk of losing their child forever whether by court order or other means.

Other possible impacts of criminal case

- Loss of visitation with the child/children
- Inability to complete services
- Inability to participate in court hearings
- Potential termination of parental rights
- A harder fight against termination
- The initiation of a dependency matter



With Support Most Parents Can Reunify

Relevant Ethical Rules

The background features abstract, overlapping geometric shapes in various shades of blue, ranging from light sky blue to deep navy blue. These shapes are primarily located on the right side of the slide, creating a modern, layered effect.

RPC 1.2-Scope of Representation, *Etc.*

What does this mean when a parent has a young child?

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by RPC 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

RPC 1.2-Scope of Representation

Comment 1

What sort of purposes might be considered in the context of parents who are convicted or incarcerated final charges, whether by plea or after trial?

Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See RPC 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by RPC 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation. See also RPC 1.1, comments [6] and [10] as to decisions to associate other lawyers or LLLTs" (highlight and bold added).

Interviewing the client

- ▶ Release conditions and prospective sentencing conditions may impede family connections
- ▶ If the client is facing incarceration, what is the client's expectations for their home, children, employment

RPC 1.1

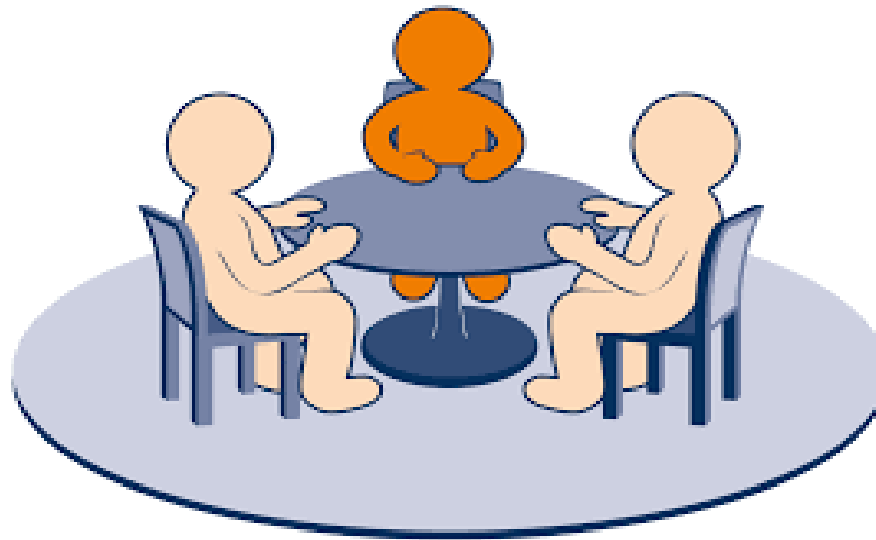
Competence & *Comment 2*

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

What if there is an open child custody case?

- Ask the client.
- Contact OPD to identify the family defender
- Secure the client's written release of information to consult and coordinate with the family defender.



RPC 1.4

Communication

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0A(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information[.]...

Considerations about an open dependency alongside a criminal matter

- ▶ Be aware that CPS workers or DCYF workers will try and talk to your clients - they may also request ROIs
- ▶ This means CPS workers or DCYF workers may try and ask your clients about their conversations with you
- ▶ Potential upsides of DCYF/CPS involvement can include payment for services, transportation and a cellphone however

Considerations about an open dependency

- ▶ No contact orders may be in place in a dependency matter but not a criminal one and vice versa - ensure the client is aware of this potential
 - ❑ work with the dependency attorney to prevent no contact order - WDA IPP has briefing
 - ❑ Consider criminal no-contact order with children will usually invite a dependency petition to be filed
 - ❑ The Department may file on one child but not another

Considerations about an open dependency

- ▶ A dependency order may involve a stipulation to a dependency petition
- ▶ The Attorney Generals can and do call clients to testify for contested hearings - be aware of the potential for admissions about your criminal case
- ▶ Visitation

RPC 2.1 Advisor

In representing a client, a lawyer shall exercise independent professional judgement and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

What can attorneys do to meet the client's goals?



- ▶ Ask the client what's important
- ▶ Determine whether there is an open child custody case
- ▶ If there is a dependency, coordinate, at client's direction, with family defender
- ▶ Contact D'Adre Cunningham with WDA's Incarcerated Parents Project

The Sentencing Hearing Isn't the End

Considerations close to the end of matter

- Preparing for incarceration
- Preventing NCOs at sentencing
- Birth certificates - copies and signing them
- Power of Attorneys & Minor Guardianships
- Visitation - hardship placements
- Participation in child's life and other custody court requirements
- NCOs

Please consult WDA IPP Resources for Lawyers webpage for information on these issues

Consider contacting WDA IPP

Incarcerated Parents Project's Mission

WDA's IPP works to end family separation caused by parental incarceration in Washington State.



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Incarcerated Parents Project
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What's Available from IPP



[ABOUT](#) [CASE SUPPORT](#) [TRAINING](#) [RESOURCES](#)

CASE SUPPORT

HOME > CASE SUPPORT > INCARCERATED PARENTS ...

- CASE ASSISTANCE
- DEATH PENALTY ASSISTANCE PROJECT
- FELONY CASE CONSULTATION
- IMMIGRATION ATTORNEY REFERRALS
- IMMIGRATION PROJECT
- IMMIGRATION RESOURCES
- INCARCERATED PARENTS PROJECT**
- ABOUT WDA'S INCARCERATED PARENTS PROJECT
- IPP NEED HELP
- IPP RESOURCES
- IPP RESOURCES FOR LAWYERS
- VISITING INFORMATION (WA STATE ONLY)
- URGENT CASES

INCARCERATED PARENTS PROJECT



Resources



Need Help



Visiting Information

Plus WDA IPP for Lawyers

INCARCERATED PARENTS PROJECT RESOURCES FOR LAWYERS

Champion Keeping Families Together

The Incarcerated Parents Project Legal Resources are separated into these categories:

- Briefing (Dependency Court, Criminal Court, & Family Court)
- Practice Advisories
- Relevant Caselaw
- Relevant Statutory Provisions
- Practice Tools for Child Caregiving Arrangements, Visits, & Services
- Practice Tools Related to Child Abuse Investigations & Client's Diminished Capacity
- Practice Tools & Policies for Court Hearings, Attorney Communications, & Attorney Visits

Past Trainings

2019 LEADERSHIP DEVELOPMENT CONFERENCE

Why are We Here? Our Purpose, Principals and Tools Presented by Hillary Behrman, Washington Defender Association (WDA) and Rob Wyman, Court Improvement Training Academy(CITA) Leading Toward Equity & Justice PowerPoint A...

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2019 WDA DEFENDER CONFERENCE: GAME CHANGING STRATEGIES FOR PUBLIC DEFENDERS

Activity ID # 1113200 Video Passwords: WDA What you Need to Know: Policy and Legislative Update Presented by Christie Hedman, Executive Director, Washington Defender Association and Kelly Vomacka, Attorney, Law Office of Kelly Vom...

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PREPARING PARENTS FOR INCARCERATION: PRACTICAL CONSIDERATIONS FOR CRIMINAL DEFENDERS (03.22.19)

Activity ID # 1102824 Video Password: WDA Preparing Parents for Incarceration: Practical Considerations for Criminal Defenders. Presented by D'Adre Cunningham. 1.25 Law and Legal Procedure Credits PowerPoint Presentation

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INVESTIGATING AND LITIGATING MITIGATION AND EXCEPTIONAL SENTENCES DOWN (02.27.19)

Activity ID# 1100522 *Video Password: WDA Investigating and Litigating Mitigation and Exceptional Sentences Down. Presented by Cindy Arends Elsberry. 1.25 Law and Legal Procedure Credits. Litigating Exceptional Sentences -CLE Han...

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Questions



THANK YOU!

WDA