



Wayne County Indigent Defense Services Department

Defender Support Unit Mandated Reporting and Confidentiality Policy

1. Purpose

To establish clear and uniform policies for attorneys, social workers, and other defense-based advocates to ensure client confidentiality as members of the defense team. This policy outlines the process for handling information about potential child, elder, or vulnerable adult abuse or neglect, or client mental health crises, including suicidality or potential harm to self.

2. Background

Social workers are ethically bound to protect client confidentiality, except when such disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client or others ([NASW Code of Ethics, Standard 1.07](#)). Further, the State of Michigan's licensing agency imposes upon social workers a "duty to report" suspicions of [child](#), [elder](#), or [vulnerable adult](#) abuse or neglect to Centralized Intake at the Michigan Department of Health and Human Services. However, this is information that an attorney would either *not* be obligated to report or, conceivably, *prohibited* to report under the Michigan Rules of Professional Conduct ([MRPC 1.6](#)).

It is the [opinion of the National Association of Public Defenders](#), as well as many public defender offices and managed assigned counsel (MAC) systems throughout Michigan and across the country that social workers may not report any such information without the express contemporaneous permission of the lawyer for whom they are doing their work.

3. General Provisions

- a. The Wayne County Indigent Defense Services Department (IDSD) established the Defender Support Unit (DSU) to make social work services available to managed assigned counsel (MAC) attorneys and their clients.
- b. DSU social workers, also known as advocates, are employed by IDSD and work in collaboration with appointed counsel on criminal defense cases. As such, they hold themselves out to be members of the criminal defense team.
- c. As members of the criminal defense team, social workers are bound by the Michigan Rules of Professional Conduct, and therefore cannot disclose any confidential information obtained throughout the course of representation without clear direction from the client's attorney. This includes, but is not limited to:
 - i. Suspicion of child, elder, or vulnerable adult abuse or neglect
 - ii. Mental health crises, including suicidality or potential harm to self

4. Policies

- a. In any instance in which a social worker employed by IDSD believes that the State of Michigan's licensing requirements or ethical standards dictate actions that an attorney might reasonably consider in conflict with MRPC 1.6, that social worker is required to disclose the perceived conflict to the following, in order of availability, where emergency or escalation requires:
 - i. The client's assigned attorney;
 - ii. The Lead Defender Support Unit Advocate; and
 - iii. The Managed Assigned Counsel Administrator.
- b. Whomever is engaged to evaluate the perceived conflict will endeavor to work with the social worker/client advocate and any other resource deemed appropriate to resolve the conflict in a manner that satisfies both professions' code of ethics and legal obligations. The social worker may not disclose any client information without clear direction from the attorney.



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- c. If the attorney is compelled to resolve the situation in a manner the social worker believes conflicts with the requirements of their state licensure, the social worker will record in case notes, and in an email to the attorney, Lead Defender Support Unit Advocate, and Managed Assigned Counsel Administrator, a statement containing the following:
 - i. The circumstances giving rise to the perceived conflict in professional codes;
 - ii. The nature of the perceived conflict; and
 - iii. Documentation that the social worker had dutifully escalated the perceived conflict and faithfully undertook advocacy in defense of their professional codes of conduct.
- d. It is recommended that the attorney documents, in their own case notes, reasons why the decision made by the attorney was necessary under MRPC 1.6.
- e. This policy also extends beyond the disposition of a case, meaning that any information learned during the client's representation may only be disclosed by the social worker/client advocate if the lawyer determines they may do so.
- f. The social worker/client advocate will make all clients aware of this policy when they first begin working on their case.