Forensic Social Work Ethics in Prolonged Solitary Confinement:
A Struggle with Dual Loyalty

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Substantial evidence on the damaging psychiatric and health-related effects of prolonged solitary confinement has been well-documented in decades of research and civil rights litigation. The emerging ethical dilemma for forensic social work concerns the dual loyalty when social workers are tasked with providing services to clients in restrictive housing. Using Frederic Reamer's ethical decision-making framework, in concert with the NASW Code of Ethics and the NOFSW Specialty Guidelines on Values and Ethics, the ethical dilemma of dual loyalty in this practice context is explored. Forensic social workers experiencing this unique ethical dilemma are encouraged to consider rational and mindful decision making guided by social work ethical codes and principles of social justice.

Keywords: dual loyalty, forensic social work, ethical decision-making, solitary confinement, restrictive housing

INTRODUCTION

The mission of social work as a professional discipline is rooted in upholding the dignity and the rights of self-determination and autonomy of the client. This core value, embedded in the NASW Code of Ethics, codified and adopted as the standard of care by all states, would seem sacrosanct in theory but is much more complex in practice where certain factors might challenge a practitioner's ability to practice ethically. This typically occurs in a workplace setting where the goals of the employer conflict with ethical social work practice. Since loyalty to the employer is also part of the NASW Code of Ethics (2017), the social worker working in certain organizations might be faced with a dilemma. To adhere to one part of the ethical code, may transgress the other. This conflict between loyalty to the employer and loyalty to the client is known as "dual loyalty" (Pont, Stover, & Wolff, 2012). Dual loyalty is not common in social work practice, as the ideals of the agency and practitioner are usually aligned, but when they are at odds, the social worker must be prepared to thoughtfully and ethically resolve this conflict.

An example of dual loyalty is the conflicting demands faced by forensic social workers employed in a jail, prison, or detention center, who provide either direct or indirect services to those in solitary confinement. Solitary confinement is defined as restriction to a cell for at least 22 hours a day (Government Accountability Office, 2013). Prolonged (also known as extended or long-term) solitary confinement is defined as any length of time in a solitary confinement cell in excess of 15 days (Mendez, 2011). Across the United States, an estimated 80,000 people are held in solitary confinement on any given day, and it is not unusual for this time in isolation to exceed months, years, and even decades (Beck, 2015; Browne, Cambier, & Agha, 2011; Department of Justice, 2016).

It is a common misconception that these solitary cells are reserved for the most dangerous people in correctional settings. Solitary confinement is frequently used as a punishment for minor rule violations, protective custody, and to house the severely mentally ill (Cloud et al., 2015; Haney, 2012; Houser & Belenko, 2015; Lanes, 2011). In fact, solitary confinement units are disproportionately filled with those who are diagnosed with a severe mental health disorder. The harm caused by prolonged solitary confinement is extensive and well-documented, especially for those with a pre-existing mental health condition. However, those with no prior mental health issues are at risk of developing psychiatric symptoms directly related to the effects of long-term solitary confinement (Buser, 2015).

Prolonged solitary confinement itself is a psychological punishment, with devastating emotional and mental health consequences. Extended stays in solitary confinement can cause severe psychiatric harm including hallucinations, hypersensitivity to external stimuli, panic attacks, cognitive deficits, anger, obsessive thinking, paranoia, anxiety, hopelessness, obsessive ruminations, depression, agitation, violent fantasies, nightmares, difficulty sleeping, and aggression (Ahalt et al., 2017; Cloud et al., 2015; Grassian, 2006; Haney, 2012; Kupers, 2017). In addition, those housed in solitary confinement are more likely to commit suicide and engage in self-harm despite the increased correctional supervision on those units (Brown, 2020;

Haney, 2018; Kaba et al., 2014). Further, it is suggested that a housing assignment in solitary confinement should constitute, in itself, an "urgent mental health need" (Winters, 2018, p. 219).

While the psychological harm of prolonged solitary confinement is strongly substantiated, growing evidence points to physical harm, as well (Shalev, 2014; Williams, 2016). Lack of sunlight limiting the absorption of Vitamin D, cramped cells restricting mobility, ongoing sensory deprivation, limited long-range visual stimuli decreasing perceptual depth, and poorly-executed medical care contributes to a higher risk of a myriad of medical problems. The damaging effects of solitary confinement do not end with release from isolation either. Ongoing psychological maladies include traumatic stress, depression, a tendency to self-isolate, hypervigilance, difficulty sleeping, heightened anxiety, difficulty concentrating and managing time, all of which bode poorly for a successful reintegration back into society (Kupers, 2017). Given these post-release complications, it is thus, unsurprising, that solitary confinement also increases recidivism and has been linked to a higher risk of death in the first year after release (Brinkley-Rubinstein et al., 2019; Gordon, 2014).

Juan Méndez, the UN Special Rapporteur on Torture and Cruel, Inhuman, and Degrading Treatment, called for an end to prolonged solitary confinement and maintains this practice causes serious mental and physical harm which may amount to torture (Mendez, 2011). Given the growing evidence as to the damaging effects of prolonged solitary confinement and mounting international pressure to end the practice, social workers who practice in these settings are at heightened risk of complicity with inhumane treatment (Winters, 2019). This article is designed to assist any social worker confronted with the ethical dilemma of dual loyalty as a consequence of employment in, or around, prolonged solitary confinement (or similar dilemmas) by applying ethical decision-making principles and providing avenues to resolve this issue.

ETHICAL DECISION-MAKING MODELS

Ethical decision-making models for social work practice generally provide a specific framework or steps through which an ethical dilemma or values conflict is resolved. The three most commonly used ethical decision-making models include Elaine Congress, Frederic Reamer, and Dolgoff, Loewenberg and Harrington. Congress uses five simple steps under the acronym ETHIC (Congress, 2000). By working through these steps, the social worker evaluates different types of values central to the dilemma, considers relevant standards or codes, hypothesizes about the consequences of different plans of action, identifies who will benefit/be harmed by the chosen plan of action, and consults supervisors/experts. Reamer uses a similar framework, which includes seven steps: 1) identify the ethical principles/codes in conflict, 2) identify those who will likely be affected by the decision, 3) tentatively identify all possible courses of action including the risks and benefits of each, 4) examine the reasons in favor of/opposed to each possible course of action, 5) consult with colleagues/experts, 6) make and document the decision, and 7) monitor/evaluate the decision (Reamer, 2018). Dolgoff, Loewenberg and Harrington use a more elaborate framework, although the basis for each of the steps is

comparable to Congress and Reamer with additional steps to consider interprofessional perspectives (Dolgoff, Loewenberg & Harrington, 2009). This framework includes an ethical principles screen that provides additional guidance in the decision-making process, although it may not be appropriate or relevant in all practice settings or cross-cultural dilemmas.

These are all legitimate options for rational decision making and social workers are encouraged to reflect upon the advantages of each model. However, when selecting an ethical decision-making framework, it is important to consider familiarity, personal preference, ease of use, the practitioner's understanding of the model's steps, and the actual practice dilemma in question. Given those factors and for the purposes of this article, Frederic Reamer's ethical decision-making model has been selected to process the complex issue of dual loyalty.

ETHICAL CODES AND PRINCIPLES RELATED TO DUAL LOYALTY

The National Association of Social Workers (NASW) constructed its first Code of Ethics in 1960 (National Association of Social Workers, n.d.). Following several revisions over the past decades, the NASW Code of Ethics has followed trends and research in an effort to better equip social workers to practice ethically in a variety of settings and with a diverse set of populations. Currently, the NASW Code of Ethics consists of a preamble, purpose, ethical principles, and a set of ethical codes (National Association of Social Workers, 2021). The six ethical principles include service, social justice, dignity and worth of a person, the importance of human relationships, integrity, and competence. The ethical codes are broken down into five ethical responsibility groupings – to clients, colleagues, practice settings, the social work profession, and broader society.

In 2021, the National Organization of Forensic Social Work (NOFSW) developed specialty guidelines for values and ethics for forensic social workers (NOFSW, 2021). These guidelines were in response to the growing need to recognize the specialty practice of forensic social work and address the unique challenges within that area of professional expertise. These guidelines include an introduction, preamble, ethical principles, and ethical standards. The six ethical principles include justice, equity, lawfulness, competence/accountability, integrity, and transdisciplinary collaboration. The ethical codes are broken down into three groupings: ethical responsibilities to client, ethical responsibilities to colleagues/employers/profession, and standards of competence.

Overall, the NOFSW guidelines are designed to partner with the NASW Code of Ethics, building upon NASW standards in a way that facilitates a more robust practice of social work in forensic settings. However, unique to the NOFSW's guidelines is a specific call to end the use of prolonged solitary confinement in the preamble. Forensic social work ethical decision-making involving solitary confinement (or any forensic social work area of practice which implicates unbalanced power dynamics and vulnerable populations) should necessarily reference these guidelines.

RESOLVING THE ETHICAL DILEMMA OF DUAL LOYALTY

Resolving any ethical dilemma using Reamer's framework begins with the first step: identifying the ethical codes in conflict and exploring ancillary concepts such as ethical responsibilities and principles that can further guide the resolution process. When dual loyalty between an agency/employer policy and the welfare of clients exists, we can start the process with exploring NASW Code 1.01 Commitment to Client and NASW Code 3.09 Commitment to Employer (NASW, 2021). Social workers have a primary responsibility to promote the well-being of clients while also honoring commitments made to employers and employing organizations, especially as it relates to following policy. Dual loyalty exists when an employer policy serves unique agency interests in a way that conflicts with client well-being, constituting a discrepancy between the ethical responsibilities social workers have toward their client and their practice setting. In the case of prolonged solitary confinement, the policies that drive its use in jails, prisons, and detention/immigration centers adversely affect client well-being. Further, it can be argued that these policies are largely unnecessary as there is significant evidence supporting the use of alternatives to prolonged solitary confinement under most, if not all, conditions (Metzner, et al., 2016; Robertson, 2016; Zyvoloski, 2018).

A conflict between two NASW ethical codes has been established, constituting the existence of dual loyalty. However, exploring these codes more thoroughly will help guide the process further and is a central part of the first step in Reamer's framework. NASW Code 3.09 suggests a potential resolution when instructing social workers to take reasonable steps to remediate the employer policy that is inconsistent with ethical practice in that agency setting (NASW, 2021). The NOFSW Code 2.01 guides forensic professionals further in suggesting these reasonable steps be productive, pragmatic, and problem-solving in nature (NOFSW, 2021).

The foundation of policies promoting the use of solitary confinement typically center around safety - safety of staff and clients alike. The NOFSW ethical principle of transdisciplinary collaboration considers diverse perspectives as the cornerstone of a pragmatic problem-solving process so any judicious conversation surrounding solitary confinement policy should naturally include language consistent with the promotion of safety for both staff and clients while voicing the importance of client well-being. If successful, the dilemma has likely been resolved by a working plan to alter the policy in question. If not, the social worker knows they have fulfilled an important step in the process by challenging the injustice in a way that is consistent with ethical codes.

The ethical principles, those of the NASW and NOFSW, can be used to guide decision-making moving forward and are particularly advantageous when identifying secondary steps as part of the resolution process. Service, in which the primary goal of social work is to help people in need and address social problems, and Social Justice, in which challenging injustice maintains an important place in action, are two NASW ethical principles that largely support any subsequent steps related to

advocacy both inside and outside the practice setting (NASW, 2021). Integrity, in which forensic social workers are mandated to pursue change in a professional manner, and Equity, in which the focus is on just and equitable outcomes related to policy, are two NOFSW ethical principles that serve to guide the pursuit of remediation of both internal agency policy and external policy practice (NOFSW, 2021). All four of these ethical principles will fulfill the first steps of Reamer's resolution process by framing the issues in a way that steeps the process in principled decision-making.

For the social worker faced with this ethical dilemma, any decision should be considered with an awareness of those who would be affected by it. This next step in Reamer's process focuses on who would be impacted by the decision made in resolving the ethical dilemma. In the case of dual loyalty, the client, colleagues, leadership, the organization as a whole, and the social worker would be the most likely entities to be impacted by any decision made in resolution of this dilemma.

These potential influences are key considerations when moving on to the next step, that of identifying the possible courses of action and the reasons in favor or opposed to each. The ethical dilemma of dual loyalty is somewhat unique in that there generally are only two possible courses of action: leaving the agency or opting to stay. However, before making this decision, the social worker must consider the ramifications of each choice. If the social worker decides to stay, it would reflect their perceived *ability* to ethically maintain employment. The decision to stay would allow a continuation of meaningful client relationships and the provision of services for the organization, in addition to positioning the social worker to continue advocating for specific clients and affecting positive change within the organization.

Although, in staying, the social worker risks being party to an oppressive system and the questionable practices of the organization. If the social worker decides to leave, it would reflect their perceived *inability* to ethically maintain employment. The decision to leave would allow greater flexibility and autonomy in the pursuit of advocacy outside the organization. By terminating employment, the social worker could bring their frontline knowledge to activist groups and a variety of media to further reform efforts, which is not generally permitted under most employment conditions. The downside would be a disruption in services to clients within the organization and the social worker would likely require alternate employment.

Throughout the decision-making process, it is important that the social worker consult with others, seeking the expertise of supervisors, colleagues, and outside professional organizations. This significant step in Reamer's framework allows the social worker to explore blind spots in thinking and fine-tune subsequent steps that align with ethical principles once the possible courses of action have been established. Consultation would play a major role in how these subsequent steps are created, employed, and framed in the context of the ethical principles identified.

Social workers struggling with ethical dilemmas and in particular, the ethical dilemma of dual loyalty, are encouraged to view the process as an attempt to arrive at an *ethical*, rather than a *right*, decision. Not all right decisions are necessarily ethical; the

concept of *ethical* is differentiated from *right* through the ethical decision-making process and by steps completed after a decision in alignment with specific ethical codes and principles. Further, not every decision is right for every social worker as novel elements exist within each situation. Monitoring the decision and continuing to explore ways to maintain ethics after arriving at a decision is the final step in Reamer's framework. There can be two or more completely different, yet ethical, decisions made in response to a dilemma and it is often in the process and actions subsequent to the decision that reflect the codes or principles central to ethical decision-making. These steps can be used to promote communication and transparency, formulate best practices, direct advocacy/activism, encourage more successful working relationships, expand equality/equity, improve client or community well-being, or other more complex interests in the helping process.

       Both courses of action outlined in this specific example of resolving dual loyalty are ethical, even though they are polar opposite decisions; both include steps that draw upon the ethical codes and principles of social work practice. Every ethical dilemma is as unique as the person experiencing it and a social worker might never encounter a dual loyalty situation in their career. However, if this ethical dilemma does arise, it is important the social worker is aware that supportive tools are available to them as they seek to maintain the highest ethical standards for their clients, and for themselves.

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