

*Journal of Forensic Social Work*, 7:32-43, 2023  
ISSN: 1936-928X print & 1936-9298 online



## Ethical Challenges in Forensic Social Work: Best Practices

Frederic G. Reamer, Ph.D.

*Rhode Island College School of Social Work*

*Many social workers become involved in legal proceedings on their clients' behalf. A subset of practitioners identify themselves as forensic social workers. Forensic social work is typically defined as the application of social work knowledge and skills to questions and issues relating to law, legal institutions, and legal proceedings. This social work specialization often entails collaboration with other professionals, especially attorneys, on clients' behalf. This collaboration sometimes leads to ethical dilemmas, especially related to commitment to clients; informed consent; client confidentiality and privileged communication; conflicts of interest; and interdisciplinary collaboration. The purpose of this article is to identify common ethical challenges in forensic social work; apply relevant social work ethics standards; discuss risk management models and protocols to protect clients and practitioners; and discuss potential ethics challenges when forensic social workers are subpoenaed during legal proceedings.*

Keywords: conflicts of interest, court, ethics, forensic social work, litigation

## INTRODUCTION

It is common for social workers to become involved in court and other legal proceedings on behalf of clients. Social workers may file formal reports or testify in a wide range of client-related legal proceedings in civil court, criminal court, family court, juvenile court, drug court, gun court, mental health court, workers compensation court, and probate court, among others. Lawyers and judges may turn to social workers to share their professional opinions about clients' mental status, competency, trauma history, behavioral health treatment, substance use, parenting ability, safety risks, and criminal conduct, among other key aspects of clients' lives. Social workers may have their records subpoenaed and may be ordered to testify in depositions and court proceedings. These diverse roles can create ethical dilemmas for forensic social workers, especially related to honoring their commitment to clients, informed consent, confidentiality, and privileged communication.

Social workers' earliest practitioners were involved in legal and court proceedings as early as the late 1800s, around the time of the profession's formal inauguration. In the late nineteenth century, members of the National Conference on Charities and Correction used legal interventions and strategies in their efforts to assist people who were struggling with poverty, mental illness, and disability (DuBois & Miley, 2005; Sheehan, 2012, 2016). Soon after, practitioners affiliated with the Charity Organization Society and Settlement House movements became involved in a wide range of legal proceedings related to child welfare and family conflict (Guin, Noble, & Merrill, 2003; Rome, 2013). During social work's earliest years, practitioners became involved especially in juvenile court proceedings, soon after the first court was established in 1899 (Platt, 1977). During that era social workers advocated on behalf of minors who came before the court (Maschi, Bradley, & Ward, 2009).

Social work's formal discussion of forensic social work as a distinct phenomenon emerged in the 1980s (Hughes & O'Neal, 1983; Maschi & Killian, 2011; Odiah, 2004; Roberts & Brownell, 1999). This is when the term forensic social work first appeared (Green, Thorpe, & Traupmann, 2005; Barker & Branson, 2003; Rome, 2013; Whitmer, 1983). Today, social workers interested in forensic social work can join a national organization established in 1983, the National Organization of Forensic Social Work (Chatfield, Vaughan-Eden, & Butters, 2011; Vaughan-Eden, 2022), which aims to develop best practices for social workers involved in interdisciplinary collaboration. An increasing number of social work education programs are offering concentrations and certificates in forensic social work (Maschi & Leibowitz, 2018).

## COMMON ETHICAL CHALLENGES

Forensic social work often entails collaboration with attorneys on clients' behalf. This is especially likely in legal services offices and public defender offices (Galowitz, 1999). Some forensic social workers work under attorneys' supervision, for example, when social workers are employed in a public defender's office that is staffed primarily by lawyers who represent indigent clients. In this setting, social workers may help lawyers prepare criminal court defense strategy, facilitate social and behavioral health services for clients, support attorney-client relationships, support clients in court, and help mitigate client sentences. In these instances, social workers may face conflicts between their ethical duties when they are juxtaposed with attorneys' ethical duties. As Deck (2016), an attorney and social worker, observed about the complexity of this collaboration:

While the benefit to interdisciplinary collaboration may be evident, the execution of such collaboration may be challenging. These disciplines are seemingly in conflict regarding the roles of each profession, otherwise described as the advocacy stance, as well as with their ethical duties to their client. An attorney is charged with advocating for a client's desires; however, as a social worker, the advocacy must be for the client's well-being. It is not uncommon for a client's desires to be in opposition to a client's well-being. . . The role of the social worker juxtaposed with the role of the attorney causes collaboration tensions. While both professionals ultimately seek to aid the client, the different professional orientations and ethical mandates applicable to their interactions with a client may cause interdisciplinary anxiety. (pp. 263, 265)

This ethical challenge requires skillful management. Here is a prototypical example drawn from the author's experience:

Melanie F., MSW, is a clinical social worker employed by the county's public defender's office, which provides legal representation to low-income clients. She assists the office's lawyers when their legal defense of an indicted client warrants a comprehensive behavioral health assessment, e.g., when clients' alleged criminal conduct was linked to their behavioral health challenges.

One afternoon, one of the office's lawyers asked Melanie to accompany her to the local jail, to interview a man who had been charged with sexually assaulting his 16-year-old stepdaughter and held without bail. The lawyer and Melanie met with the client in a room set aside for attorney-inmate conferences. During the conversation, the inmate said: "They say I raped her. It's not true. Not at all. Yes, I had too much to drink that night and we were fooling around, and maybe I shouldn't have touched her the way I did. But I didn't mean to hurt her, and I *definitely* didn't rape her."

At that moment, the lawyer asked Melanie F. to step outside of the room. In a soft voice, the lawyer said to Melanie: "You know what [the inmate] just said about fondling his stepdaughter? You did not hear that. Understand?" The lawyer told Melanie that reporting this information to child welfare authorities to comply with state mandatory reporting laws governing social workers would violate the client's confidentiality rights according to lawyers' ethical standards, which do not include mandated reporting requirements.

Several facts are key to social workers' skillful management of this complex scenario consistent with social work ethics. Clearly, both forensic social workers and lawyers are bound by their respective codes of ethics. However, ethical standards for social workers and lawyers differ significantly regarding confidentiality exceptions.

Social workers are not only allowed to disclose otherwise confidential information for certain reasons (for example, if disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client or other identifiable person), but they are in fact encouraged to disclose the information in situations involving potential harm (Madden, 2003; Reamer, 2015). Further, social workers are often mandated by law to disclose otherwise confidential information in certain situations, for example, when they suspect abuse of children or vulnerable adults.

In contrast, according to the American Bar Association's (2022) *Model Rules of Professional Conduct*, attorneys are only allowed to disclose otherwise confidential information in the following situations: (1) when a client consents; (2) when the attorney believes it is reasonably necessary to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm; and (3) to establish or defend a claim related to the attorney's relationship with the client. Disclosure at these times is discretionary, not mandatory (Coleman, 2001).

More specifically, a lawyer is duty-bound to maintain confidentiality when a client discloses information about commission of a crime in the *past*, for example, child abuse. In some circumstances, social workers are mandated reporters when clients disclose information about crimes they have committed in the past, e.g., child abuse and neglect. Complications arise especially when a social worker is employed by a legal office, a setting in which the lawyers—the professional "hosts"—may claim that their ethical duties override social workers' ethical duties when they conflict.

## RISK MANAGEMENT MODELS

Some social workers claim that, by definition, forensic social work entails fundamental conflicts of interest. In a strongly worded statement, Odiah (2004) concludes, “the adversarial and the quasi-coercive atmosphere in which forensic social workers find themselves makes it impossible to attain positive therapeutic alliances with patients. Social work ethical precepts have little relevance in an environment where the information obtained during the therapeutic process may be used in an adversarial setting” (p. 5).

Over time, social workers and lawyers have developed various risk management models—also known as collaboration models—in an effort to navigate these ethical challenges (Coleman, 2001; Deck, 2016; Galowitz, 1999; St. Joan, 2001). They are known as the consultant model; employee model; consent model; notice model; and confidentiality wall model. Which model is most appropriate in any given circumstances depends on multiple factors, including the nature of the forensic social worker’s role, work setting, and relationship to non-social work colleagues, especially lawyers (Deck, 2016; Galowitz, 1999). No single model is appropriate in all forensic social work settings and roles that entail interprofessional collaboration.

### Consultant Model

Under the consultant model, social workers are available to clients’ attorneys for consultation but do not provide services directly to clients and are not employed by the lawyers’ office (Coleman, 2001; Deck, 2016; Galowitz, 1999). In contrast to the case example, the social worker may not know the client’s identity. In the role of consultant, a social worker may confer with an attorney to assist in the legal representation of the attorney’s client. The social worker may assist by providing the attorney with professional advice about the client’s challenges, alternatives to incarceration or psychiatric hospitalization, expert testimony, and jury selection advice, among other issues. Under this model, the social worker does not have a direct service role and, thus, is less likely to encounter a conflict of interest. The fact that the social worker is not privy to the lawyer’s client file limits the opportunity for conflicts of interest.

### Law Firm Employee Model

Under the employee model, as in the case example, social workers are hired to work in a legal office (such as a legal services or public defender office), provide services to clients, and, when appropriate, consult with attorneys (Coleman, 2001; Deck, 2016; Galowitz, 1999). With this model, the attorneys’ confidentiality policies extend to the social worker. In this respect, social workers may encounter a conflict of interest, for example, when social work ethics standards mandate disclosure of suspected child abuse or neglect to protective service authorities while lawyers’ ethics standards prohibit disclosure. To avoid a conflict of interest, the employer may limit social workers’ access to information that, according to social work ethics standards, must be disclosed or reported. As Deck (2016) notes: “In this instance, the law firm may need to make the decision to bar the social worker from working with the client entirely, establish protocols to allow the social worker to work with the client but prevent the social worker from learning reportable information, or inform the client from the onset of the client’s involvement with the firm that the social worker is a mandated reporter and to gain the client’s consent to work with the social worker” (p. 277).

### Consent Model

Under the consent model, clients are asked to consent to the sharing of information that may lead to disclosure by the social worker or attorney, for example, reporting of suspected abuse or neglect of a child or vulnerable adult (Coleman, 2001; Deck, 2016; Galowitz, 1999). The social worker may provide services to the client but is not part of the legal team. This was not the arrangement in the case example. This model would permit both social workers and attorneys to disclose information, thus avoiding a conflict of professional duty.

## Notice Model

Under the notice model, clients are informed in advance of the social worker's ethical obligations, including mandatory reporting requirements (Coleman, 2001; Deck, 2016; Galowitz, 1999). In principle, the notice model could have been used in the case example, although it was not. This is a variation on the consent model, in that clients are asked to agree to receive services knowing that social workers will abide by their profession's ethics standards.

## Confidentiality Wall Model

In some settings where social workers collaborate with other professionals who have different ethics standards, practitioners have agreed to create a "confidentiality wall" that limits sharing of sensitive information that could lead to a conflict. Confidentiality walls minimize the likelihood of inappropriate or inadvertent disclosures (Coleman, 2001; Deck, 2016; Galowitz, 1999). This arrangement may require creation of "shadow" or secondary files so that information recorded by social workers cannot be accessed by other staffers within the same office or organization. While this arrangement can help to avoid conflicts of interest among staffers, it is not consistent with prominent social work models that favor interdisciplinary collaboration and integrated care that includes comprehensive sharing of information pertinent to a client's well-being (Reamer, 2018a). The confidentiality wall model was not implemented in the case example.

## SOCIAL WORK ETHICS STANDARDS

Forensic social workers who practice in interdisciplinary roles and settings with potentially conflicting ethical duties should be mindful of key social work ethics standards that may govern their management of ethical dilemmas and their decisions about whether and how to follow the consultant model, employee model, consent model, notice model, and confidentiality wall model (Barsky, 2019; Reamer, 2015, 2018b). This is especially important given that a significant number of legal matters in which forensic social workers have a role are adversarial in nature. Practitioners must be exceedingly careful to discharge their ethical duties responsibly to protect clients. Further, social workers should engage in sound risk management to prevent litigation that alleges negligence on the social worker's part and licensing board complaints that allege violation of the ethics standards adopted by the board. The most relevant ethics standards concern commitment to clients, informed consent, privacy and confidentiality, conflicts of interest, and interdisciplinary collaboration. These standards are reflected in two prominent codes of ethics pertaining to forensic social work: the National Association of Social Workers (2021) *Code of Ethics* and *Specialty Guidelines for Values and Ethics* adopted by the National Organization of Forensic Social Work (2020).

## Commitment to Clients

The NASW *Code of Ethics* (2021) recognizes that social workers may encounter a conflict between their primary commitment to clients and to third parties: "Social workers' primary responsibility is to promote the well-being of clients. In general, clients' interests are primary. However, social workers' responsibility to the larger society or specific legal obligations may, on limited occasions, supersede the loyalty owed clients, and clients should be so advised. (Examples include when a social worker is required by law to report that a client has abused a child or has threatened to harm self or others.)" (standard 1.01). This standard may apply when, for example, a forensic social worker functions under the employee model and has informed clients of their duty to comply with ethics standards adopted by attorneys. This standard may also apply when social workers function under the consent or notice models and inform clients of their mandated reporting obligations when practitioners suspect abuse or neglect of a child or vulnerable adult. In theory, this standard could have been applied in the case example.

This possible clash between ethical standards adopted by social workers and standards adopted by other professions with which they collaborate on behalf of clients is acknowledged explicitly in the *Specialty*

*Guidelines for Values and Ethics* adopted by the National Organization of Forensic Social Work (2020): “. . . forensic social work professionals recognize that particular positions may prohibit actions that place the client in further legal jeopardy, including mandated reporting” (p. 6). Thus, forensic social workers who collaborate with non-social workers may encounter conflicts of interest. This is a particular challenge when forensic social workers are instructed by attorneys with whom they collaborate to not comply with laws that govern social workers. That is, complying with the attorney’s instruction may lead to a violation of social workers’ ethical duty and conflict with the expectation that social workers will comply with policies established by lawyers and legal offices that employ them. The NASW *Code of Ethics* acknowledges this possibility when it requires social workers to be alert to and avoid conflicts of interest that may interfere with the exercise of professional discretion and impartial judgment (standard 1.06[a]).

## **Informed Consent**

Forensic social workers who collaborate with non-social work colleagues have a duty to explain to clients the nature of their role and their legal and ethical obligations. Even when social work services are court ordered, practitioners are obligated to inform clients about the nature of their services and limitations regarding clients’ right to consent. For example, if the social worker and colleagues from other professions adopt the consent model, notice model, confidentiality wall model, or employer model, clients should be provided with a clear and understandable explanation of the extent to which information they share with the social worker will and will not be protected. NASW Code of Ethics standard (1.03[a]) requires social workers to use clear and understandable language to inform clients of the purpose of the services, risks related to services, clients’ right to refuse or withdraw consent, and the time frame covered by the consent.

## **Privacy, Confidentiality, and Privileged Communication**

Navigating complex confidentiality issues is common in forensic social work. First and foremost, forensic social workers should respect clients’ right to privacy and avoid asking questions that are not directly germane to the social worker’s task. According to the NASW *Code of Ethics*, “social workers should not solicit private information from or about clients except for compelling professional reasons. Once private information is shared, standards of confidentiality apply” (standard 1.07[a]). Social workers have a duty to explain to clients the extent to which they have confidentiality rights and related exceptions (standard 1.07[e]).

Practitioners often face circumstances where they must balance clients’ privacy and confidentiality rights with their occasional duty to share information with third parties, such as non-social work colleagues with whom they collaborate, protective service professionals, and law enforcement officials. Forensic social workers understand that clients’ right to confidentiality is not absolute; disclosure may be permitted or required under a wide range of circumstances. For example, a social worker who specializes in addictions treatment may be employed in an agency that is governed by both HIPAA (Health Insurance Portability and Accountability Act) and the strict federal law governing protection of substance use disorders treatment records (42 CFR Part 2, *Confidentiality of Substance Abuse Disorder Patient Records*). HIPAA permits practitioners to disclose limited protected health information without client consent in order to comply with a court order or to identify or locate a fugitive, suspect, material witness, or missing person (Herold & Beaver, 2015). However, disclosures that are permitted under HIPAA may not be permitted under 42 CFR Part 2 (Reamer, 2015). This regulation broadly protects the confidentiality of the records of substance use disorder treatment programs—with respect to the identity, diagnosis, prognosis, or treatment of any client—maintained in connection with any program or activity relating to substance use disorder treatment that is federally assisted. Disclosures by forensic social workers are permitted only in a narrow range of circumstances that are set forth in this detailed federal regulation.

Forensic social workers must be particularly knowledgeable about the concept of privileged communication. The right of privileged communication—which assumes that a professional cannot disclose confidential information without the client’s consent—originated in British common law, under which no

“gentleman” could be required to testify against another individual in court (Glossoff, Herlihy & Spence, 2000). Among professionals the attorney-client relationship was the first to gain the right of privileged communication. Over time other groups of professionals, such as social workers, physicians, psychiatrists, psychologists, mental health counselors, and clergy, sought legislation to provide them with this right (Fisher, 2013; Madden, 2003).

Forensic social workers need to understand the distinction between *confidentiality* and *privilege*. *Confidentiality* refers to the professional norm that information shared by or pertaining to clients will not be shared with third parties. *Privilege* refers to rules governing the disclosure of confidential information in court or legal proceedings. As Meyer, Landis, and Hays (1988) say,

The terms confidentiality and privilege, though often confused, actually refer to different legal concepts. Confidentiality refers to the broad expectation that what is revealed in a private or “special” relationship based upon trust will not be shared with third parties. Obviously, the kind of information revealed by individuals in therapy fits into this category. Privilege is a narrower concept that concerns the admissibility of information in a court of law, though in practice it really refers to whether courts may legitimately compel revelation of confidential information for the purpose of legal proceedings. (pp. 51-52)

Various groups of professionals, including forensic social workers, have argued that they and their clients need statutory protection from requests to reveal confidential information. Courts commonly accept four conditions, proposed in 1905 by the jurist John Henry Wigmore, as necessary to the consideration of information as privileged: (1) The parties involved in the conversation assumed that it was confidential; (2) confidentiality was an important element in this relationship; (3) the community recognizes the importance of this relationship; and (4) the harm caused by disclosure of the confidential information would outweigh the benefits of disclosure during legal proceedings (Porwancher, 2016).

Regarding the first condition, forensic social workers can reasonably assume that clients expect that information that they share will be kept confidential. Further, a central tenet of forensic social work is that confidentiality is an essential element of the clinical relationship, effective assistance depends on clients’ willingness to trust practitioners with the most personal details of their lives, and that such trust is necessary if this relationship is to be meaningful and productive. In addition, the community at large generally accepts the assumption that relations between clients and social workers are important and valuable, thus satisfying Wigmore’s third condition. The fourth condition, that the injury caused by disclosure of confidential information is greater than the benefit gained from disclosure, is ordinarily the most difficult to satisfy and triggers the greatest debate.

The most significant federal court decision with direct bearing on forensic social workers is the landmark case of *Jaffe v. Redmond*, in which the U.S. Supreme Court ruled in 1996 that the clients of clinicians have the right to privileged communication in federal courts (Alexander, 1997). In this precedent-setting case, the plaintiff—the administrator of the estate of a man killed by a police officer—sought access to a social worker’s clinical record concerning therapy she provided to the police officer; the client (police officer) objected arguing that disclosure should be prevented because of a psychotherapist-patient privilege. The district court judge ruled that the Federal Rules of Civil Procedure did not provide for a psychotherapist-client privilege and allowed the discovery of the social worker’s clinical record, but neither the social worker nor the client complied with the request. The judge advised the jury that the refusal to turn over the social worker’s notes could be considered a presumption that the content of the notes would have been unfavorable to the client, the police officer. Ultimately, this case reached the U.S. Supreme Court.

In its decision the U.S. Supreme Court said that “participants [in therapy] must be able to predict with some degree of certainty whether particular discussions will be protected. An uncertain privilege, or one which purports to be certain but results in widely varying applications by the courts, is little better than no privilege at all” (*Jaffe v. Redmond*, 116 S. Ct. at 1932 (1996)). This case is particularly important in forensic

social work because it established, for the first time in U.S. legal history, that social worker–client relationships are privileged in federal court proceedings; until the *Jaffe* decision only some state courts recognized social worker–client privilege.

It is important to note that the *client* holds the privilege, not the forensic social worker; the practitioner has a duty to assert the client’s privilege and protect relevant information from disclosure. Over the years both courts and statutes have identified a number of exceptions to the client’s right of privileged communication. A number of these exceptions pertain to judicial proceedings that may involve forensic social workers, such as when a client introduces in criminal court information that he has received social work counseling for emotional problems resulting from a fight that has led to a suit for damages or when a forensic social worker’s testimony about a client is required so the practitioner can defend against a suit filed by the client.

Disclosure of privileged information may also be permissible when a client expresses imminent danger to self or others, shares information in the presence of a third person, is a minor and is the subject of a custody dispute, is involved in criminal activity or has been abused or neglected, is impaired and may pose a threat to the public (for example, the client is an actively alcoholic bus driver), has not paid his or her fees and a collection agency is retained, or has informed the practitioner about plans to commit a serious crime (Fisher, 2013). Social workers should ensure that clients are informed of these possible exceptions.

Forensic social workers should adhere to several relevant code of ethics standards, especially when collaborating with attorneys whose confidentiality standards differ from social work confidentiality standards. The *Specialty Guidelines for Values and Ethics* adopted by the National Organization of Forensic Social Work (2020) addresses this issue explicitly:

Forensic social work professionals understand that confidentiality may at times, conflict with attorney-client privilege. It is the duty of the forensic social work professional to ascertain the limits of confidentiality and if and/or how attorney-client privilege may be affected. Forensic social work professionals should consult with regional licensing boards, local statutes, and other professionals to determine the extent of confidentiality and privilege when serving forensic social work clients. (standard 1.03)

Further, the NASW *Code of Ethics* also includes several standards that are germane to such confidentiality decisions. These standards provide guidance regarding social workers’ duty to obtain valid consent (standard 1.07[b]); inform clients about exceptions to their right to confidentiality (standards 1.07[c] and 1.07[e]); and inform clients in advance about any planned disclosure and the possible consequences, when feasible (standard 1.07[d]), especially when disclosures may be called for during legal proceedings (standard 1.07[j]).

### **Interdisciplinary Collaboration**

Forensic social work typically entails collaboration with other professionals to serve clients effectively. The *Specialty Guidelines for Values and Ethics* adopted by the National Organization of Forensic Social Work (2020) highlights the importance of this collaboration: “Forensic social work professionals value transdisciplinary partnerships as they often strengthen the ability and likelihood of producing just outcomes across legal and human service systems” (standard 2.02).

As noted, ethical standards governing social workers and the professions with which practitioners collaborate may differ, especially related to confidentiality matters. When differences of opinion on these matters and relevant policies arise, social workers should take steps to ensure that their non-social work colleagues are familiar with and understand social work practice and ethical standards. Two standards in the NASW *Code of Ethics* are particularly relevant. They concern the obligations of social workers who are members of interdisciplinary teams to ensure that colleagues are familiar with social workers’ unique ethical



obligations (standard 2.03[a]) and to take assertive steps if a team decision raises ethical concerns (standard 2.03[b]).

## RESPONDING TO SUBPOENAS

Forensic social workers and their confidential records may be subpoenaed. Responding to subpoenas in an ethical manner is critically important in order to protect clients and practitioners. The stakes are high when forensic social workers respond to subpoenas, given the sensitive, confidential, and possibly adversarial nature of the information sought.

A subpoena is a written document issued by a court clerk or officer of the court (such as an attorney) that commands a person to appear in court at a specific place and time or produce specific documents (Madden, 2003; Reamer, 2015). While a subpoena may appear to be a court order and look official, it typically is not signed by a judge and is not the same as a court order.

Forensic social workers can be subpoenaed in two different ways. A subpoena ad testificandum, also known as an ordinary subpoena, literally means "to testify under penalty." It commands a person to appear at a particular location to give testimony. The most common use of a subpoena is to require a witness to attend a deposition (pretrial discovery) or trial. A subpoena duces tecum, also known as a subpoena for production of evidence, literally means "bring with you under penalty." It commands a person to appear at a particular location to bring a specified item, such as a client's clinical record or copies of digital or electronic communications, for use or examination in a legal proceeding.

A subpoena duces tecum is used most often in civil lawsuits when one party to a lawsuit seeks production of documents from a third party during the pretrial discovery process. If a court is convinced that the document request is legitimate, it can order the production and disclosure of otherwise confidential documents (Madden, 2003).

Forensic social workers should be aware that subpoenas may demand production of electronically stored information (ESI) that they have shared, posted, or stored. Common examples of ESI include: word processing documents; emails and their attachments; text and instant messages; messaging incorporated into online workplace collaboration tools; spreadsheets; digital photographs; videos; call logs; voicemails; information stored in databases and electronic records; electronic records of online activity, such as social media postings and other activity; and data generated by connections between sensors, software, and other technologies for the purpose of connecting and exchanging data with other devices and systems over the internet. ESI, which often includes confidential information, may be stored on and retrieved from many sources, including computer hard drives; agency or organization servers; thumb (USB) drives; databases; the cloud (servers that are accessed over the internet, and the software and databases that run on those servers); mobile devices, such as mobile phones and tablet computers; and social media websites, such as Facebook, Twitter, and LinkedIn.

Forensic social workers who are subpoenaed may face a special dilemma concerning the disclosure of privileged information. If the practitioner works in a state that grants the right of privileged communication to social workers' clients, challenging the subpoena may be easier because the legislature has acknowledged the importance of the privilege. Also, contrary to many practitioners' understanding, a legitimate response to a subpoena is to argue that the requested information should not be disclosed or can be obtained from some other source. A subpoena itself does not require a practitioner to disclose information. Instead, a subpoena is essentially a request for information, and it may be without merit. Practitioners who are subpoenaed should immediately notify their client and ask the client whether he wants to sign a release-of-information form or contest the subpoena in court.

If forensic social workers believe that a subpoena is inappropriate (for example, because it requests

information that state law considers privileged), they can arrange for a lawyer (the client's lawyer and a lawyer retained to represent the social worker) to file a motion to quash the subpoena, which is an attempt to have the court rule that the request contained in the subpoena is inappropriate. A judge may issue a protective order explicitly limiting the disclosure of specific privileged information during the discovery phase of the case (discovery is a pretrial procedure by which one party obtains information—facts and documents, for example—about the other). In addition, practitioners, perhaps through a lawyer, may request a review by the judge in camera (a review in the judge's chambers) of records or documents that they believe should not be disclosed in open court. The judge can then decide whether the information should be revealed in open court and made a matter of public record. These various steps are clearly consistent with the NASW *Code of Ethics*:

Social workers should protect the confidentiality of clients during legal proceedings to the extent permitted by law. When a court of law or other legally authorized body orders social workers to disclose confidential or privileged information without a client's consent and such disclosure could cause harm to the client, social workers should request that the court withdraw the order or limit the order as narrowly as possible or maintain the records under seal, unavailable for public inspection. (standard 1.07[j])

## CONCLUSION

Forensic social work has come of age and is now a key specialization in the profession. Significant numbers of practitioners become involved in legal proceedings on behalf of clients. Forensic social workers who become involved in legal proceedings can face several daunting ethical issues, especially pertaining to client confidentiality, privileged communication, informed consent, documentation, and conflicts between social workers' and non-social workers' ethical standards. It is important for forensic social workers to understand the nature of these ethical challenges and have the ability to apply prevailing ethical standards when they arise. To protect clients and practitioners, prudent practice should ensure that all parties are informed as soon as possible of the ethical standards and practices that will govern their relationships.

More generally, the social work profession should take assertive steps to address challenges faced by forensic social workers. Social work education programs would do well to include content on ethical issues in forensic social work in their undergraduate and graduate curricula. Organizations such as the National Organization of Forensic Social Work, Clinical Social Work Association, National Association of Social Workers, and Council on Social Work Education can offer continuing education trainings on this subject to enhance awareness and knowledge development. State licensing boards and the Association of Social Work Boards can grant credit to practitioners who enroll in continuing education offerings related to forensic social work. Also, these organizations can encourage or sponsor research designed to address ethical issues in forensic social work.

Interprofessional collaboration is a hallmark of sound social work practice. Social workers understand the many ways in which active coordination with colleagues can redound to clients' benefit. Forensic social work represents a quintessential example of this approach to helping vulnerable clients. Forensic social work also provides an exemplary model of steps social workers can take to adhere to ethical standards, protect clients, and protect themselves.

## REFERENCES

- Alexander, R. (1997). Social workers and privileged communication in the federal legal system. *Social Work*, 42, 387-391. <https://doi.org/10.1093/sw/42.4.317>
- American Bar Association. (2022). *Model rules of professional conduct*. Author.
- Barker, R., & Branson, D. (2003). *Forensic social work: Legal aspects of professional practice* (2nd ed.). Haworth Press.
- Barsky, A. (2019). *Ethics and values in social work: An integrated approach for a comprehensive curriculum* (2nd ed.). Oxford University Press.
- Chatfield, G., Vaughan-Eden, V., & Butters, R. (2011). The history of the National Organization of Forensic Social Work. *Journal of Forensic Social Work*, 1, 4-7. <https://doi.org.eric.idm.oclc.org/10.1080/1936928X.2011.541197>
- Coleman, B. (2001). Lawyers who are also social workers: How to effectively combine two different disciplines to better serve clients. *Washington University Journal of Law & Policy*, 7, 131-158. [https://openscholarship.wustl.edu/law\\_journal\\_law\\_policy/vol7/iss1/9](https://openscholarship.wustl.edu/law_journal_law_policy/vol7/iss1/9)
- Deck, P. (2016). Law and social work: Reconciling conflicting ethical obligations between two seemingly opposing disciplines to create a collaborative law practice. *Western New England Law Review*, 38, 261-283. <http://digitalcommons.law.wne.edu/lawreview/vol38/iss2/3>
- DuBois, B., & Miley, K. (2005). *Social work: An empowering profession* (5th ed.). Allyn & Bacon.
- Fisher, M. (2013). *The ethics of confidentiality: A practice model for mental health professionals*. Oxford University Press.
- Galowitz, P. (1999). Collaboration between lawyers and social workers: Re-examining the nature and potential of the relationship. *Fordham Law Review*, 67, 2123-2154. <https://ir.lawnet.fordham.edu/flr/vol67/iss5/16>
- Glossoff, H., Herlihy, B., & Spence, E. (2000). Privileged communication in the counselor-client relationship. *Journal of Counseling & Development*, 78, 454-462. <https://doi.org/10.1002/j.1556-6676.2000.tb01929.x>
- Green, G., Thorpe, J., & Traupmann, M. (2005). The sprawling thicket: Knowledge and specialization in forensic social work. *Australian Social Work*, 58, 142-153. <https://doi.org/10.1111/j.1447-0748.2005.00199.x>
- Guin, C., Noble, D., & Merrill, T. (2003). From misery to mission: Forensic social workers on multidisciplinary mitigation teams. *Social Work*, 48, 362-371. <https://doi.org/10.1093/sw/48.3.362>
- Herold, R., & Beaver, K. (2015). *The practical guide to HIPAA privacy and security compliance*. Routledge.
- Hughes, D., & O'Neal, B. (1983). A survey of current forensic social work. *Social Work*, 32, 393-394. <https://doi.org/10.1093/sw/28.5.393>
- Madden, R. (2003). *Essential law for social workers*. Columbia University Press.
- Maschi, T., Bradley, C., & Ward, K. (Eds.). (2009). *Forensic social work: Psychosocial and legal issues across diverse practice settings*. Springer Publishing Company.
- Maschi, T., & Killian, M. (2011). The evolution of forensic social work in the United States: Implications for 21<sup>st</sup> century practice. *Journal of Forensic Social Work*, 1, 8-36. <https://doi.org/10.1080/1936928X.2011.541198>
- Maschi, T., & Leibowitz, G. (Eds.). (2018). *Forensic social work: Psychosocial and legal issues across diverse populations and settings* (2nd ed.). Springer Publishing Company.
- Meyer, R., Landis, E., & Hays, J. (1988). *Law for the psychotherapist*. W. W. Norton, 1988.
- National Association of Social Workers. (2021). *Code of ethics* (rev.). Author.
- National Organization of Forensic Social Work. (2020). *Specialty guidelines for values and ethics*. Author.
- Odiah, C. (2004). Impact of the adversary system on forensic social work practices: Threat to therapeutic alliance and fiduciary relation. *Journal of Forensic Psychology Practice*, 4, 3-33. [https://doi.org/10.1300/J158v04n04\\_02](https://doi.org/10.1300/J158v04n04_02)
- Platt, A. (1977). *The child savers: The invention of delinquency* (2nd ed.). University of Chicago Press.
- Porwancher, A. (2016). *John Henry Wigmore and the rules of evidence: The hidden origins of modern law*. Columbia, MO: University of Missouri Press.
- Reamer, F. (2015) *Risk management in social work: Preventing professional malpractice, liability, and disciplinary action*. Columbia University Press.
- Reamer, F. (2018a). *Ethical standards in social work: A review of the NASW Code of Ethics* (3rd ed.). NASW Press.

- Reamer, F. (2018b). Ethical issues in integrated health care: Implications for social workers. *Health & Social Work, 43*, 118-124. <https://doi.org/10.1093/hsw/hly005>
- Roberts, A., & Brownell, P. (1999). A century of forensic social work: Bridging the past to the present. *Social Work, 44*, 359-369. <https://doi.org/10.1093/sw/44.4.359>
- Rome, S. (2013). Forensic social work. *Encyclopedia of social work*.  
<https://doi.org/https://10.1093/acrefore/9780199975839.001.0001/acrefore-9780199975839-e-154?rskey=KV8UXx&result=1> <https://doi-org.ric.idm.oclc.org/10.1093/acrefore/9780199975839.013.154>
- Sheehan, R. (2012). Forensic social work: A distinctive framework for intervention. *Social Work in Mental Health, 10*, 409-425. 5. <https://doi.org/10.1080/15332985.2012.678571>
- Sheehan, R. (2016). Forensic social work: Implementing specialist social work education. *Journal of Social Work, 16*, 726-741. <https://doi.org/10.1177/1468017316635491>
- St. Joan, J. (2001). Building bridges, building walls: Collaboration between lawyers and social workers in a domestic violence clinic and issues of client confidentiality. *Clinical Law Review, 7*, 403-468.
- Vaughan-Eden, V. (2022). National Organization of Forensic Social Work in the 21<sup>st</sup> century: A historical retrospective of the last 10 years. *Journal of Forensic Social Work, 6*, 4-10.  
<https://doi.org/10.15763/issn.1936-9298.2022.6.1.4-10>
- Whitmer, G. (1983). The development of forensic social work. *Social Work, 28*, 217-223.  
<https://doi.org/10.1093/sw/28.3.217>
- Wigmore, J. (1905). *A treatise on the system of evidence in trials at common law*. Little, Brown.