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Lawyers Who Are Also Social Workers: How to Effectively Combine Two Different Disciplines to Better Serve Clients

Brigid Coleman*

A trend recently developed towards interdisciplinary education and practice. In our complex world, legal problems are often intertwined with problems in other areas, including social problems, medical problems, and economic problems. In response, many universities offer dual degree programs¹, by which students can earn a law degree in conjunction with another graduate degree.² One such program, existing at over twenty universities across the country, provides students with the opportunity to earn dual degrees in law and social work.³

* J.D., M.S.W., Washington University, 2002.

1. Dual degree programs, also referred to as joint degree programs or combined degree programs, are programs in which the two graduate degrees are pursued concurrently. Most of this Note, however, applies equally to practitioners who have earned their two degrees separately.

2. Fields of study most commonly combined with Law in dual degree programs include Business, Social Work, Public Administration, Political Science, Urban and Regional Planning, History, Economics, and Accounting. Linda R. Crane, *Interdisciplinary Combined-Degree and Graduate Degree Programs: History and Trends*, 33 J. MARSHALL L. REV. 47, 77 (1999). For a good discussion of J.D./M.B.A. programs, see *id.* at 76-77; John Warren Kindt, *An Analysis of Legal Education and Business Education within the Context of a J.D./M.B.A. Program*, 31 J. LEGAL EDUC. 512 (1982).

Crane discusses some of the difficulties of pursuing dual degrees, including administrative problems, balancing competing perspectives, learning the language and thought patterns of two distinct disciplines, explaining the program to potential employers who view it as indicative of a lack of focus, and overcoming professors' feelings of superiority. Crane, *supra* at 49, 64. In fact, she goes so far as to say it is misleading to refer to the programs as joint degree programs because students "are simply enrolled in two or more totally separate terminal degree programs in two schools within the same university simultaneously." *Id.* at 71.

In my personal experience as a J.D./M.S.W. student, I encountered some of the difficulties Crane mentions, but I would not go as far as Crane does. My experience has mostly been one of cooperation between the two schools and awareness of the special situation of dual degree students.

3. Such programs typically consist of four years of study (as opposed to five, if the two degrees are pursued separately). The law school and the social work school both accept a certain number of credits from the other school, recognizing that many of the required classes

There are many benefits to earning degrees in both law and social work. Skills learned in a Master of Social Work (M.S.W.) program that are helpful in the practice of law include interviewing, empathic listening, identification of clients' goals, evaluation, crisis intervention, and referral. In addition, social workers' clients must often overcome a number of barriers, legal and otherwise. For that reason, it is critical that social workers⁴ have some familiarity with the law in order to understand and explain their clients' legal rights. Since the two fields complement each other so well, both lawyers and social workers are increasingly called upon to consult with each other and work in multidisciplinary teams to provide better service to their clients.⁵ From the clients' perspective, someone qualified as both an

for the two different degrees hold value for both degrees. For example, Washington University in Saint Louis has the nation's first and most distinguished social work and law program. WASHINGTON UNIVERSITY IN ST. LOUIS, JOINT DEGREE: LAW & SOCIAL WORK (2000). It was established in 1972 and has more than seventy-five graduates. *Id.* There are currently over twenty students pursuing the two degrees. At Washington University, the School of Social Work accepts twelve credits transferred from the School of Law, and the School of Law accepts nine credits transferred from the School of Social Work. *Id.*

4. Throughout this Note, the term "social worker" refers to a practitioner with a Master's Degree in Social Work (M.S.W.).

5. A number of articles address ways in which interdisciplinary efforts between attorneys and social workers are beneficial. *See generally* Sia Arnason et al., *The Successful Marriage of Law and Social Work*, 23 CLEARINGHOUSE REV. 450 (1989); Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 IND. L.J. 775 (1997); Frank P. Cervone & Linda M. Mauro, *Ethics, Cultures, and Professions in the Representation of Children*, 64 FORDHAM L. REV. 1975 (1996); Paula Galowitz, *Collaboration Between Lawyers and Social Workers: Re-Examining the Nature and Potential of the Relationship*, 67 FORDHAM L. REV. 2123 (1999); Randy Retkin et al., *Attorneys and Social Workers Collaborating in HIV Care: Breaking New Ground*, 24 FORDHAM URB. L.J. 533 (1997); The Honorable Jack B. Weinstein, *When is a Social Worker As Well As a Lawyer Needed?*, 2 J. INST. FOR STUDY LEGAL ETHICS 391 (1999). There are, however, no articles that I am aware of that address the unique possibilities and particular problems faced by a practitioner who is both an attorney and a social worker. This Note attempts to fill that gap.

It is also interesting to note, as Galowitz points out, that there is a significant body of social work literature that addresses social workers working with lawyers, but very little legal literature on the subject. Galowitz, *supra* at 2129. The small amount of literature that exists is primarily focused on child representation. *Id.*; *see, e.g.*, Cervone & Mauro, *supra*; Gerard F. Glynn, *Multidisciplinary Representation of Children: Conflicts Over Disclosures of Client Communications*, 27 J. MARSHALL L. REV. 617 (1994); Paul Johnson & Katharine Cahn, *Improving Child Welfare Practice Through Improvements in Attorney-Social Worker Relationships*, 54 U. PITT. L. REV. 229 (1992); Robert P. Mosteller, *Child Abuse Reporting Laws and Attorney-Client Confidences: The Reality and the Specter of Lawyer as Informant*, 42 DUKE L.J. 203 (1992); Jean Koh Peters, *Concrete Strategies for Managing Ethically-Based*

attorney and a social worker, with the respective skills from both professions, provides a valuable resource to address their overlapping social and legal needs. Thus, for many, it makes perfect sense to embody the skills of both professions by pursuing both degrees.

Once graduates of law and social work dual degree programs (J.D./M.S.W.s) begin practicing, there are still many potential obstacles. Social workers and attorneys take two very different and often conflicting approaches in their practices.⁶

This Note demonstrates that dual degrees in law and social work are invaluable, as long as the J.D./M.S.W. is aware of the potential problems and addresses them affirmatively in order to overcome them. Part I provides background information on the theoretical groundings and practice norms of the two fields and gives an overview of how the two degrees complement and conflict with each other. Part II analyzes the conflicts between the two fields. Part III proposes solutions to the conflicts and advocates an approach for J.D./M.S.W.s to overcome these problems. Part IV briefly summarizes the options available to J.D./M.S.W.s and calls for action to resolve the potential conflicts proactively.

Conflicts Between Children's Lawyers and Consulting Social Workers Who Serve the Same Client, KY. CHILDREN'S RTS. J., Mar. 1991, at 15; Lisa A. Stanger, Note, *Conflicts Between Attorneys and Social Workers Representing Children in Delinquency Proceedings*, 65 FORDHAM L. REV. 1123 (1996).

6. For instance, attorneys act as zealous advocates for their clients' wishes at all times. Social workers, however, may use one of two accepted approaches: pure advocacy or the best interests model. The pure advocate approach means that the social worker will value her client's self-determination above all and assist him in achieving his goals, whether or not the social worker feels that the course of action chosen by the client is in the client's best interest. The best interests model requires the social worker to decide what is best for the client and advocate that course of action, whether or not it purports with the client's wishes. For a good discussion of these two approaches and how they differ, see Stanger, *supra* note 5.

If a J.D./M.S.W. prefers the pure advocacy method, which is more common and generally better accepted in the field of social work, no conflict exists. If a J.D./M.S.W., however, prefers the best interests model, she will face an internal conflict over how to practice according to the values of her two chosen professions, as the two approaches could lead to very different results.

I. THE PRACTICES OF LAW AND SOCIAL WORK AND HOW THEY INTERACT

A. Backgrounds of Law and Social Work

According to the American Bar Association's (A.B.A.) *Model Rules of Professional Conduct*, "[a] lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice."⁷ A lawyer's varied roles include advisor, advocate, negotiator, intermediary, and evaluator.⁸ Lawyers are generally concerned only with legal issues and conditions that directly affect a specific case.⁹ In addition, the legal profession commonly reflects an individualistic and non-collaborative view.¹⁰ Finally, social justice is not an explicit goal of the legal profession. Lawyers see justice as the efficient result of an adversarial system; as long as they serve their clients well, justice is served in that process.¹¹

On the other hand, the purpose of social work is, in essence, to help people by any ethical means.¹² Social workers tackle even the most complex of problems and target not only the individual or

7. MODEL RULES OF PROF'L CONDUCT Preamble (2001).

8. *Id.*

As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As intermediary between clients, a lawyer seeks to reconcile their divergent interests as an advisor and, to a limited extent, as a spokesperson for each client. A lawyer acts as evaluator by examining a client's legal affairs and reporting about them to the client or to others.

Id.

9. Cervone & Mauro, *supra* note 5, at 1977. Cervone and Mauro imply that this narrow focus is an effect of seeing things in terms of relevancy. *Id.*

10. Galowitz, *supra* note 5, at 2145.

11. MODEL RULES OF PROF'L CONDUCT Preamble (2001).

12. KAREN K. KIRST-ASHMAN & GRAFTON H. HULL, JR., UNDERSTANDING GENERALIST PRACTICE 3 (1999). Kirst-Ashman and Hull specify four main sub-goals of social work's general goal of helping people: "to (1) enhance the problem-solving and coping capacities of people, (2) link people with systems that provide them with resources, services, and opportunities, (3) promote the effective and humane operations of these systems, and (4) contribute to the development and improvement of social policy." *Id.*

family experiencing the problem, but also the possible causes in the surrounding environment.¹³ Because the cause of social problems could relate to anything, a social worker is trained to look beyond the immediate problem to help find a solution. The Council on Social Work Education articulates the main values as relationships, acceptance, confidentiality, honesty, respect, commitment, responsiveness, and diversity.¹⁴ Finally, one of the stated goals of social work is social and economic justice, not through any process, but rather as an outcome.¹⁵

Social workers rely on systems theory, which means that all aspects of a client's life are considered relevant to the client's problem.¹⁶ In addition, a key aspect of social work is an understanding of the person in his environment.¹⁷ Social workers examine not only the particular problem faced by their clients, but also the various familial, social, and community forces that affect them.¹⁸ Therefore, social workers investigate "social factors, such as poverty, discrimination, and educational and employment opportunities"¹⁹ as well as "individual factors of motivation such as capacity, behavior, history, and family relationships."²⁰ Systems theory, a concept central to the social work field, acts as a framework for social workers to assess how different factors affect their clients.²¹ This theory recognizes that each person is connected to several

13. *Id.* at 7-8.

14. Cervone & Mauro, *supra* note 5, at 1990. The basic social work values and ethics include:

(1) relationships built on regard for individual worth and dignity, and advanced by mutual participation, acceptance, confidentiality, honesty, and responsible handling of conflict; (2) respect for the individual's right to make independent decisions and to participate actively in the helping process; (3) commitment to assisting client systems to obtain needed resources; (4) efforts to make social institutions more humane and responsive to human needs; and (5) demonstrated respect for and acceptance of the unique characteristics of diverse populations.

Id.

15. CODE OF ETHICS OF THE NAT'L ASS'N OF SOCIAL WORKERS § 6.04 (1999).

16. KIRST-ASHMAN & HULL, *supra* note 12, at 11.

17. *Id.* at 13.

18. Galowitz, *supra* note 5, at 2143.

19. Cervone & Mauro, *supra* note 5, at 1977.

20. *Id.*

21. *Id.* at 1977-78.

systems, and a change in one part of the system will effect change in other parts.²²

B. *The Benefits of Earning Both a J.D. and M.S.W.*

The fields of social work and law have a long history of interaction.²³ Although the two disciplines also have a long history of misunderstanding,²⁴ practitioners in both law and social work continually attempt to work through these differences to provide better services to their clients.²⁵ This continual effort should not be

22. *Id.* at 1978. For example, an individual may be affected by, *inter alia*, physical, psychological, social, and economic elements. If he is not physically well, that may affect his economic well-being because he might have to take time off from work. If he is feeling isolated from his friends and does not socialize much, that could lead to psychological problems, such as depression.

23. In fact, as far back as 1897, Oliver Wendell Holmes contended that knowledge of the law and of legal rules must be enlightened by a better understanding of the social world. Babb, *supra* note 5, at 792 (citing O.W. Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 469 (1897)). In 1917, Mary Richmond, a caseworker who profoundly shaped modern social work, referred to how critical legal authorities were in assisting her in her casework. Galowitz, *supra* note 5, at 2153-54.

24. This misunderstanding is demonstrated by the following excerpt from the *Social Work Year Book of 1933*:

The members of each profession are often unfamiliar with the aims and methods of the other. Social workers tend to consider the law to be rigid and artificial, and its administration to be antiquated, lagging behind social thinking . . . Lawyers, on the other hand, may believe that social workers ignore the personal rights which the law carefully protects; that they do not guard the information of clients which lawyers would consider "privileged communications"; that they dominate other people's affairs . . . and are ignorant of the law with which they constantly deal.

Retkin et al., *supra* note 5, at 542-43 (citing DONALD T. DICKSON, *Law and Social Work*, in 1 ENCYCLOPEDIA OF SOCIAL WORK 823, 826 (17th ed. 1977)).

25. Randy Retkin, Gary L. Stein, and Barbara Hermie Drainin articulate the different settings in which attorneys and social workers work together as five different models of practice: (1) separate legal organizations and social service agencies that work together; (2) multiservice centers, consisting of both legal and social services; (3) legal agencies that employ social workers to work with the attorneys on client issues; (4) social service agencies that hire staff attorneys to deal with clients' legal issues; and (5) a team approach, where lawyers and social workers act as separate but equal members of a team with a common goal of delivering the most effective services to clients. Retkin et. al., *supra* note 5, at 562-65. I would add a sixth model of practice for J.D./M.S.W.s. See also Heather B. Craige & William G. Saur, *The Contribution of Social Workers to Legal Services Programs*, 14 CLEARINGHOUSE REV. 1267 (1981) (advocating the increased hiring of social workers for legal services programs).

surprising, considering some of the very similar goals the two fields share.²⁶

Attorneys and social workers each have a central commitment to serve their clients.²⁷ They both act as advocates for their clients, help their clients determine what their needs are, and then, help them to meet those needs.²⁸ Both fields use a problem-solving approach to address their clients' needs and resolve issues.²⁹ These two professions also require extensive training and have licensing requirements.³⁰ The similarities are even more obvious when

26. At least one author suggests that social workers could fill unmet legal needs by engaging in a limited practice of law. Anthony Bertelli, *Should Social Workers Engage in the Unauthorized Practice of Law?*, 8 B.U. PUB. INT. L.J. 15 (1998). Bertelli discusses how social workers who work at community centers and settlement houses are in the perfect position to address the gap in services caused by the increased demand for legal work by the poor and drastic cuts in legal aid services. *Id.* at 16. He proposes that social workers can identify the character of a client's legal problem, make contacts, prepare papers, and resolve routine issues (though they would never deal with complex issues or make court appearances on their own). *Id.* His long-term goal is to integrate a practical legal component to social work education. *Id.* Bertelli's identification of legally significant issues commonly encountered by social workers in community practice is particularly helpful to a discussion of how law and social work interact:

1. Juvenile matters, e.g., dependency, neglect, delinquency, abuse, and guardianship.
2. Marriage, e.g., licensing procedures, uncontested fault/no-fault divorce, child custody, child/spousal support, and financial settlements.
3. Children, e.g., abortion, unmarried parents, paternity, adoption, emancipation, and placement.
4. Elder Issues, e.g., federal programs, competence, employment eligibility, and health care.
5. Benefits, e.g., welfare and Supplemental Security Income/Social Security Disability.
6. Housing, e.g., tenants' rights, housing code enforcement, rent withholding, eviction, and public housing.
7. Education, e.g., right to education, corporal punishment, pregnancy, dress, and requiring students to repeat grades.

Id. at 20-21.

27. Galowitz, *supra* note 5, at 2147.

28. Retkin et al., *supra* note 5, at 545.

29. *Id.*

30. *Id.* at 543-44. It is important to note that theories of social work education and legal education are quite different. Karen M. Staller & Stuart A. Kirk, *Knowledge Utilization in Social Work and Legal Practice*, 25 J. SOCIOLOGY & SOCIAL WELFARE 91 (1998). Social work masters programs require a large number of hours spent in the field, actually doing social work, because it is understood that social work students can learn best by doing. *Id.* at 94. Legal education is generally more theoretical and involves primarily classroom learning. *Id.* Although most law schools, in addition to classroom learning, also offer clinical opportunities, only a small percentage of students take advantage of such programs. *Id.*

comparing a social worker with a public interest or legal services attorney³¹ because both focus on enhancing the lives of poor people through direct services to individuals as well as social reform of societal systems.³²

Despite all these similarities, the differences in perspectives and training also make social workers and lawyers a good team (and lawyer-social workers valuable practitioners). Attorneys possess a vast array of legal skills that social workers do not. Oftentimes, social workers' clients face an intricate set of problems, in both the social and legal arenas.³³ Therefore, it is essential that social workers have at least some understanding of a client's legal rights and the process by which to advocate for those rights. Many social workers refer their

Also interesting is the comparison that Staller and Kirk make between the case studies emphasized in social work education and the case law that is taught in law school. They acknowledge that case studies and case law are similar in that they are both client-specific, concrete, and involve only a limited generalizability beyond the specific facts of the case. *Id.* at 94-95. The main difference they cite is that case law is significantly more important and plays a greater role in legal practice than case studies do in social work practice. *Id.* at 95. This difference is most notably demonstrated by the vast systems created as a repository for case law (e.g. reporters, Westlaw, Lexis-Nexis); no such system exists in social work. *Id.* This comparison is important because it emphasizes a difference between law and social work. Law is conservative; the notion of *stare decisis* is sacred, and case law is collected so that the results may be applied again if similar cases arise. *Id.* at 99. Social work, on the other hand, is often about change and does not rely on the system of *stare decisis*. *Id.*

31. One author contends:

Law school curricula need to include more courses focusing on substantive topics relevant to the legal problems of indigent persons and other traditionally underrepresented groups. Since persons in these groups often rely on government assistance for financial subsistence, they experience a higher incidence of legal problems than any other segment of society. Their legal problems are deeply imbedded in the most serious social issues of our time: discrimination, education, health, shelter, employment, and welfare. Students who are exposed to these problems in a demanding academic environment will be better prepared to be informed public-policy makers in the future.

Henry Rose, *Law Schools Should Be About Justice*, 40 CLEV. ST. L. REV. 443, 450-51 (1992).

32. Galowitz, *supra* note 5, at 2132-33.

33. For example, consider a sixteen-year-old client who is homeless because his mother kicked him out of his home. He has been sleeping on the streets for several weeks and has received several municipal citations for loitering. He failed to appear in court, and as a result, he now has a warrant out for his arrest. He started using drugs and alcohol to dull his pain. His high school refuses to let him attend because he does not have a guardian's permission. These many problems are both social and legal in nature, and a service provider who can deal with both types of problems will be able to serve him better.

clients to attorneys in situations involving legal problems, but a social worker/attorney team or a J.D./M.S.W. satisfies both needs in a holistic manner.

There are also a number of skills taught in M.S.W. programs that are invaluable in any client relationship, particularly when serving marginal populations such as the poor, children, the elderly, and AIDS patients. These skills include interviewing,³⁴ empathic listening, identification of clients' goals, evaluation, crisis intervention, and referral. Attorneys typically do not receive much instruction in counseling or interacting with clients, and so these social work skills are critical.³⁵ This observation is especially true because it is often necessary to understand the psychological aspects of the clients' legal problems in order to help them.³⁶ Indigent clients usually have a variety of problems that contribute to, or in some way affect, their legal situations.³⁷ Social workers are capable of assessing these systemic environment-related problems and addressing them.³⁸ Also, legal services clients are often very upset when they seek legal help because the issues they need help with generally involve a significant personal loss or a threat to their survival.³⁹ Crisis intervention training ensures that these emotional and social aspects of the case are not ignored, thereby better serving the clients.⁴⁰

Another difference that a social work perspective greatly adds to the legal realm is a focus on diversity. Race is a predominant component of social work practice.⁴¹ Social workers consistently recognize this dynamic in their work, in terms of actual racism (intended or not), institutional racism, and its historical significance.⁴²

34. On a related note, social workers' interviewing skills may be especially helpful in mediation, negotiation and alternative dispute resolution. For a discussion of how social work skills are useful in this process, see Margaret M. Severson & Tara V. Bankston, *Social Work and the Pursuit of Justice Through Mediation*, 40 SOC. WORK 683 (1995).

35. Galowitz, *supra* note 5, at 2128.

36. *Id.* at 2148.

37. *Id.* at 2130.

38. Cervone & Mauro, *supra* note 5, at 1988.

39. Galowitz, *supra* note 5, at 2130. Examples include the loss of an apartment or social security benefits.

40. *Id.*

41. Cervone & Mauro, *supra* note 5, at 1982.

42. *Id.* The Council on Social Work Education even requires social work programs to reflect in their curriculum the commitment of the social work profession to understanding and

Lawyers, however, rarely consider this issue except in certain strategic uses, such as jury selection.⁴³ In many cases, race could be a significant issue in the client's situation,⁴⁴ and being cognizant of this issue is helpful. Social workers are equally in tune with cultural diversity, religious diversity, and many other differences.

Additionally, social workers are involved in an attempt to make the judicial process less adversarial so as to preserve the relationships of those involved.⁴⁵ The social worker perspective can help attorneys gain the trust of their clients and ascertain their clients' interests.⁴⁶

A background in social work is also helpful in understanding (and even generating) the social science research that is often utilized in the legal arena.⁴⁷ For example, some judges misconstrue divorce as a one-time event rather than an ongoing process in the parties' lives.⁴⁸ Social science research demonstrates the long-term psychological effects of divorce on both the parents and their children.⁴⁹ Someone trained in social work will also possess a better understanding of child development and the various stages and needs of children, a key factor in custody decisions.⁵⁰

appreciating diversity. *Id.* at 1983; *see also* Council on Social Work Education, *Master's Candidacy Evaluative Criteria and Interpretive Guidelines*, at http://www.cswe.org/accreditation/Accreditation_Standards/MCECIG.htm#5 (last visited Jan. 8, 2002).

43. *Id.* Of course, there are exceptions to this statement. For instance, attorneys in immigration practice consider race and ethnicity daily. *See generally* STEPHEN H. LEGOMSKY, *IMMIGRATION AND REFUGEE LAW AND POLICY* (2nd ed. 1997).

44. For example, an African American's eviction could be a result of racism, rather than missed rent payments, as her landlord claims.

45. Babb, *supra* note 5, at 808; *see also* Katherine van Wormer, *No Wonder Social Workers Feel Uncomfortable in Court*, 9 *CHILD & ADOLESCENT SOC. WORK J.* 117 (1992) (arguing that the justice system's adversary model is contrary to social work principles of cooperation and negotiation).

46. This perspective is especially helpful in the context of cases involving children. Most lawyers do not receive professional training that would help them to ascertain what their young clients need or help them to relate to them. Social workers can also help attorneys understand very young children who have communication barriers. Cervone & Mauro, *supra* note 5, at 1988-89; Peters, *supra* note 5.

47. All social workers are required to take at least one course on sociological research methods, and many of their other classes interpret social research and data. Council on Social Work Education, *Curriculum Policy Statement for Master's Degree Programs*, at http://www.cswe.org/accreditation/Curriculum%20Policy/CPS_mas.htm (last visited Jan. 8, 2002).

48. Babb, *supra* note 5, at 775.

49. *Id.* at 779 n.5.

50. *Id.* at 793-94.

In addition, someone trained in both social work and law is better able to ensure that clients are happy down the road, not just in the short-term. One example of this stems from another divorce case.⁵¹ Often, parties to a divorce tell their attorneys that they do not want their spouse to take anything. Their attorneys are likely to take this declaration at face value and do everything in their power to achieve that goal. Even when they succeed, however, they fail. Their clients are never encouraged to consider the consequences that their desire for revenge will have on them, their former spouse, and their children (who may never forgive them). An attorney-social worker can better help their clients examine the implications of their initial goals and discuss the advantages and disadvantages of different strategies before proceeding.⁵²

Certain settings clearly exemplify the value of social work and law degrees. Clients who are infected with HIV or AIDS benefit greatly from the services of an attorney-social worker because a great many of their needs are both legal and social.⁵³ Working with the elderly is another such situation. The elderly face a number of legal issues such as financial planning, wills, guardians, and advance

51. See Amy Guttman, *Can Virtue Be Taught to Lawyers?*, 45 STAN. L. REV. 1759, 1761-62 (1993).

52. For a good discussion of how attorneys can better handle situations such as these, see ANTHONY KRONMAN, *THE LOST LAWYER: FALLING IDEALS OF THE LEGAL PROFESSION* 129-34 (1993). Kronman argues that when dealing with "impetuous clients" attorneys must "deliberate, for and with their clients, about the wisdom of their clients' ends, as opposed simply to supplying them with the legal means for realizing their desires." *Id.* at 133. This deliberation could certainly be aided by the client-interactions skills earned in an M.S.W. program.

53. Issues faced by HIV/AIDS patients include housing, medical needs, mental health care, difficulty obtaining access to social services, lost jobs and insurance due to HIV status, drafting of wills, power of attorney issues, and child custody. See Retkin et al., *supra* note 5, at 533-34.

To effectively assist clients in resolving legal problems, . . . social workers need awareness of the laws and policies impacting on their clients' lives, as well as the legal processes that clients must navigate to resolve conflicts. Likewise, to ensure that legal options are viable in light of their clients' familial, cultural, and economic situations, attorneys assisting clients with HIV can benefit from a better understanding both of their clients' psychosocial needs, and the public welfare system and community services their clients use.

Id. at 542.

directives, to name a few.⁵⁴ At the same time, these older adults are likely struggling with such “social work issues” as loneliness, fear, anxiety, illness, mental impairment and disability claims, and health care financing.⁵⁵

C. The Conflicts Inherent in Practicing with Both a J.D. and M.S.W.

A number of differences exist between the legal and social work professions that can potentially cause conflicts rather than benefits. First, the focus of the two fields tends to be different. Social workers can serve individuals, couples, families, groups, and communities by allowing them to look beyond an individual client to surrounding family and friends and other contexts. On the other hand, attorneys generally focus only on an individual client, primarily as a means to avoid conflicts of interest.⁵⁶

A number of conflict areas are inherent only in interdisciplinary teams. The problems⁵⁷ include: expense,⁵⁸ difficulty to coordinate,⁵⁹ time pressure,⁶⁰ discomfort due to differences in professional training and perspectives;⁶¹ difficulty in sharing information,⁶² and

54. *Id.* at 543.

55. Retkin et al., *supra* note 5, at 543. For a discussion of elderly clients, the interdisciplinary services they can benefit from, and the conflicts inherent in these interdisciplinary services, see Heather A. Wydra, Note, *Keeping Secrets Within the Team: Maintaining Client Confidentiality While Offering Interdisciplinary Services to the Elderly Client*, 62 FORDHAM L. REV. 1517 (1994).

56. Retkin et al., *supra* note 5, at 545-46. Retkin notes that both of these approaches are valid and argues that clients should be informed of the two approaches and asked to decide which they prefer. *Id.* at 546; see also MODEL RULES OF PROF'L CONDUCT R. 1.7 (2001).

The Honorable Jack Weinstein also articulates this issue. He says, “social workers tend to expand an inquiry when a social problem is presented to get to the root causes, to solve related difficulties of the whole person, and to stay with the case with continuing help. Lawyers tend to narrow the question, to address and solve the present issue, and then to close the case.” Weinstein, *supra* note 5, at 391. He refers to these two approaches as the “Tell Me More” approach and the “Get to the Point” approach. *Id.*

57. Each of these problems will be explained and discussed in greater depth in the analysis section of this paper.

58. Ann Moynihan, *Ethics and the Multidisciplinary Team: A Difficult Mix*, INTERDISC. REP. ON AT-RISK CHILD. & FAMILIES, Nov.-Dec. 1998, at 49, 50.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

differences in status, legal standing, salary, and prestige.⁶³ Many of these problems are due to the fact that neither legal education nor social work education adequately prepares students to work with people of different professions.⁶⁴

Another related problem is that “collaborating professionals are often confused about the division of tasks among the various members of the team.”⁶⁵ The roles of the different team members are disputed, leading to frustration and resentment.⁶⁶ Interdisciplinary training helps to alleviate this problem.⁶⁷

J.D./M.S.W.s are able to avoid most of the above-mentioned problems⁶⁸ because training in both fields provides an understanding of the other discipline and helps sort out any problems internally.

One issue that is not entirely solved by obtaining both degrees,

63. Cervone & Mauro, *supra* note 5, at 1975.

64. *Id.* at 1976. For a great discussion of the cultural differences that impede collaboration between disciplines, see Janet Weinstein, *Coming of Age: Recognizing the Importance of Interdisciplinary Education in Law Practice*, 74 WASH. L. REV. 319 (1999). She categorizes the cultural differences in the following way: (1) knowledge (including differences in training, education, etc.); (2) language (specialized jargon, different meanings for common words); (3) skills (based on knowledge); (4) methods (“the procedures used for synthesizing information and exercising professional skills”); (5) attitudes and values (differences reflected in problem-solving approaches); and (6) institutions (e.g. justice system, social service agencies—act as reinforcement of the differences). *Id.* at 329-35.

One author suggests that a reason for the lack of collaboration between lawyers and social workers is that lawyers tend to operate from the left side of the brain while social workers tend to operate from the right side of the brain. See Judith Alphonso Lau, *Lawyers vs. Social Workers: Is Cerebral Hemisphericity the Culprit?*, 62 CHILD WELFARE 21 (1983).

65. Cervone & Mauro, *supra* note 5, at 1984. For example, “lawyers might interpret a social worker performing legal tasks in juvenile court as the unauthorized practice of the law and thus, outside the realm of social work practice.” *Id.*

66. One study focusing on work with abused children showed that both lawyers and social workers wanted responsibility for many of the same tasks, including:

- (1) requesting authorization from the court to file a petition alleging that a child is a ‘Child in Need of Services;’
- (2) deciding what allegations to make in such a petition;
- (3) explaining reasons for court hearings to parents;
- (4) deciding whether a child should testify at court hearings;
- (5) entering agreements with parents or their representative regarding the disposition of a case;
- (6) recommending a particular disposition to the court; and
- (7) interpreting and explaining the court order to the child’s parents.

Robin Russel, *Role Perceptions of Attorneys and Caseworkers in Child Abuse Cases in Juvenile Court*, 67 CHILD WELFARE 205, 209-10 (1988).

67. Johnson & Cahn, *supra* note 5, at 232.

68. Again, the reasons for this ability will be elaborated upon in the analysis section of this paper. See analysis *infra* Part II.

although it is alleviated in part, relates to advocacy for a client. Attorneys act as zealous advocates for their clients' wishes at all times.⁶⁹ Social workers, however, may use one of two approaches: pure advocacy or the best interests model.⁷⁰ Clients' self-determination is a primary concern of the field of social work, and so the best interests model is perhaps less popular than it was in the past. If J.D./M.S.W.s prefer the best interests model, they will face an internal conflict over how to practice according to the values of their two chosen professions.⁷¹

Conversely, the social work goal of self-determination may come into conflict with the attorney role of advisor.⁷² A lawyer's goal is to win the case for her client, and in order to do so, it is usually necessary and appropriate to give advice to the client.⁷³ A social worker's goal is not to give advice to his clients but rather to help his clients think and act for themselves.⁷⁴ A lawyer-social worker will need to resolve this conflict.

69. MODEL RULES OF PROF'L CONDUCT Preamble (2001).

70. For a definition and discussion of these two approaches, see *supra* note 6.

71. Lisa Stanger argues that social workers working in legal settings are not able to employ the best interests model but must instead use a pure advocacy model. Stanger, *supra* note 6, at 1154-56. I would hypothesize that J.D./M.S.W.s are more likely to prefer the pure advocacy method anyway, due to their legal training. Either way, the conflict will only be an internal one that the attorney-social worker must resolve for herself.

Methodology conflicts may be harder to resolve when social workers and attorneys work together. A common example is the dilemma of whether or not to reveal information in a child custody case that is good for the child, but bad for the case. If a woman who wants custody of her son is an alcoholic, but the court is not aware of that, the mother's attorney, as a zealous advocate, does not inform the court of the situation. The attorney's ethical obligation is met as long as he answers the opponent's and the court's questions honestly; he is under no obligation to offer information gratuitously that might help the other side. MODEL RULES OF PROF'L RESPONSIBILITY R. 3.4 (2001). A social worker involved in the case, however, may quite naturally feel that it is in the best interest of the child not to be placed with an alcoholic. Though she is on the team that is working with the mother, the social worker may see her client system as encompassing the son as well, and either way, she may feel that it is her duty to notify the court of the situation in order to protect the child. This conflict will need to be resolved between the attorney and the social worker in order for their working relationship to be successful. This example is drawn from Cervone & Mauro, *supra* note 5, at 1980-81.

72. Sandra Nee, *From a Lawyer-Social Worker—Some Thoughts on Confidentiality and Other Matters*, PRAC. DIG., Fall 1984, at 33. Nee contends that because of the inherent ethical conflicts, she cannot practice both as a lawyer and as a social worker for the same client, a contention with which I strongly disagree. Nee's Article is indicative of the need for these issues to be addressed.

73. *Id.*

74. *Id.*

The main dilemma facing J.D./M.S.W.s is an ethical one. “Due to the distinct ethical mandates of the two professions . . . legal and social work practitioners must expect conflict and tension in cooperating to represent a common client.”⁷⁵ The professions of social work and law have differing ethical codes, and the problem is most critical regarding confidentiality. An attorney is prohibited from revealing information relating to the representation of her client except in very limited situations.⁷⁶ These exceptions are: (1) when a client consents;⁷⁷ (2) when the attorney reasonably believes that disclosure is 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”;⁷⁸ or (3) to establish a defense for the lawyer in any suit based upon the relationship with the client.⁷⁹

The *Code of Ethics of the National Association of Social Workers* (NASW), however, incorporates a somewhat narrower confidentiality requirement. It requires that social workers protect the confidentiality of all information obtained in the course of professional services, unless the client consents⁸⁰ or unless there are “compelling professional reasons.”⁸¹ Social workers are not expected to keep client information confidential “when disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client or other identifiable person.”⁸² In addition, laws in all states limit this confidentiality further by requiring social workers to report suspected child abuse to the state.⁸³

75. Peters, *supra* note 5, at 15.

76. MODEL RULES OF PROF'L CONDUCT R. 1.6 (2001).

77. *Id.*

78. *Id.*

79. *Id.* It is not required that a lawyer reveal confidential information in any of these three situations; rather, it is merely permitted. *Id.*

80. CODE OF ETHICS OF THE NAT'L ASS'N OF SOC. WORKERS § 1.07 (1999).

81. *Id.*

82. *Id.* This rule is the Code's elaboration upon the meaning of “compelling professional reasons.”

83. *See, e.g.*, ALASKA STAT. § 47.17.020 (Michie 2000); ARIZ. REV. STAT. ANN. § 13-3620 (West 2001); CAL. PENAL CODE § 11166 (West 2000); COLO. REV. STAT. ANN. § 19-3-304 (West 1999); IOWA CODE ANN. § 232.69 (West 2000); KAN. STAT. ANN. § 38-1522 (2000); ME. REV. STAT. ANN. tit. 22, § 4011 (West 2000); MASS. GEN. LAWS ANN. ch. 119, § 51A (West 2001); MO. REV. STAT. § 210.115 (1999); S.D. CODIFIED LAWS § 26-8A-3 (Michie 1995); VT. STAT. ANN. tit. 3, § 4913 (1995); VA. CODE ANN. § 63.1-248.3 (Michie 1995).

So what happens when an attorney and a social worker work together to represent a client? If a conflict arises, whose code prevails? What happens to ethical obligations if one member of the team is a mandated reporter and the other is not? The professions' codes do not address this issue.⁸⁴ The lawyer's and social worker's

It is in this context of child welfare laws that mandatory reporting of child abuse or maltreatment most often leads to conflict over confidentiality issues. Galowitz, *supra* note 5, at 2137-38.

In addition, it is important to note that the application of these mandatory reporter statutes to attorneys is the subject of some discussion. *See generally* Alison Beyea, *Competing Liabilities: Responding to Evidence of Child Abuse that Surfaces During the Attorney-Client Relationship*, 51 ME. L. REV. 269 (1999); Bruce A. Boyer, *Ethical Issues in the Representation of Parents in Child Welfare Cases*, 64 FORDHAM L. REV. 1621 (1996); Ellen Marrus, *Please Keep My Secret: Child Abuse Reporting Statutes, Confidentiality, and Juvenile Delinquency*, 11 GEO. J. LEGAL ETHICS 509 (1998); Mosteller, *supra* note 5.

84. The A.B.A.'s *Model Rules of Professional Conduct* are silent on the standards of attorney behavior towards members of other professions. Galowitz, *supra* note 5, at 2145-46. The A.B.A. did have a Commission on Multidisciplinary Practice between 1998 and 2000. STEPHEN GILLERS & ROY D. SIMON, *REGULATION OF LAWYERS: STATUTES AND STANDARDS* xiv (2001). After much study on the topic, the Commission recommended that the A.B.A. amend their *Model Rules of Professional Conduct* to permit limited multidisciplinary practice. *Id.* The recommendation provided:

RESOLVED, that the American Bar Association amend the Model Rules of Professional Conduct consistent with the following principles:

1. Lawyers should be permitted to share fees and join with non-lawyer professionals in a practice that delivers both legal and nonlegal professional services (Multidisciplinary Practice), provided that the lawyers have the control and authority necessary to assure lawyer independence in the rendering of legal services. "Nonlawyer professionals" means members of recognized professions or other disciplines that are governed by ethical standards.
2. This Recommendation must be implemented in a manner that protects the public and preserves the core values of the legal profession, including competence, independence of professional judgment, protection of confidential client information, loyalty to the client through the avoidance of conflicts of interest, and *pro bono publico* obligations.
3. Regulatory authorities should enforce existing rules and adopt such additional enforcement procedures as are needed to implement these principles and to protect the public interest.
4. The prohibition on nonlawyers delivering legal services and the obligations of all lawyers to observe the rules of professional conduct should not be altered.
5. Passive investment in a Multidisciplinary Practice should not be permitted.

Id. at 1054.

In my opinion, the Commission's recommendation suffered from a lack of consideration about multidisciplinary *individuals*, i.e. J.D./M.S.W.s, etc. In any event, the A.B.A. House of Delegates overwhelmingly opposed any changes "unless and until additional study demonstrates that such changes will further the public interest without sacrificing or

ability to work in a team may be jeopardized if they are worried about their conflicting obligations to their respective professions. In addition, the client may not be served as effectively.⁸⁵

This problem is exacerbated when the practitioner has both a J.D. and M.S.W. because the practitioner would have an obligation to follow the ethical mandates of two professions.⁸⁶ This obligation is impossible to fulfill when the mandates are conflicting, as they often are. This situation is all the more serious because the stakes are so high. The possible consequences of an attorney disobeying the ethical mandates of the *Model Rules of Professional Conduct* include admonishment, probation, public reprimand, suspension, and disbarment.⁸⁷ Potential consequences for a social worker not following the *NASW Code of Ethics* are just as serious and include payment of restitution, censure, suspension of membership, exclusion from the National Association of Social Workers and referral to state licensing boards for further sanctions.⁸⁸ The stakes are even higher if a mandatory reporting state statute is involved. If a social worker fails to follow the law, she is subject to criminal and civil penalties.⁸⁹ Finally, it is imperative that this conflict be solved because the people

compromising lawyer independence and the legal profession's tradition of loyalty to clients." *Id.* at xv. Rather than pursue such additional study, the A.B.A. House of Delegates also voted to discharge the Commission on Multidisciplinary Practice. *Id.* Clearly, change has been and will continue to be met by resistance.

It is my opinion that much of this resistance stems from a fear of competition between accountants and attorneys and not from any potential problems associated with collaborating with social workers.

The *NASW Code of Ethics* addresses interdisciplinary teams, saying that "social workers should treat colleagues with respect . . . and should cooperate with . . . colleagues of other professions when such cooperation serves the well-being of clients." Galowitz, *supra* note 5, at 2145-46 (citing CODE OF ETHICS OF NAT'L ASS'N OF SOCIAL WORKERS § 2.03 (1996)). In fact, the *Code* expressly encourages social workers to participate in interdisciplinary teams. *Id.* There is, however, no mention of potential ethical conflicts or how they should be resolved. *Id.* In addition, the situation has not yet been resolved by case law. Glynn, *supra* note 5, at 641.

85. For instance, if an attorney is the lead practitioner on the case, she may exclude the social worker from much of the client interaction so as to avoid any potential conflict. This response, however, means that the client does not receive the benefit of the social worker being there for the interview.

86. Neither of the two professions' codes refers to this dilemma of dual-degreed practitioners. See MODEL RULES OF PROF'L CONDUCT (2000) and CODE OF ETHICS OF THE NAT'L ASS'N OF SOCIAL WORKERS (1999).

87. Glynn, *supra* note 5, at 656.

88. *Id.*

89. *Id.*

most likely to be hurt by it, besides the practitioners, are the marginal clients most often served by social worker-attorneys, such as the poor, children, and the elderly.

II. POTENTIAL CONFLICTS FACED BY J.D./M.S.W.s

With the increasing popularity of interdisciplinary education and practice, the professions of law and social work reached a critical point in deciding how the two fields and its practitioners will work together. As the number of J.D./M.S.W.s continues to grow, there is an increasing importance in solving the potential conflicts inherent in merging the two disciplines. Both fields need to address these issues soon or else both practitioners and clients will suffer.

The benefits are too many to ignore. As discussed earlier, they include the advantage of a holistic approach, a variety of skills to handle clients' social and legal problems, and an increased ability to interact with clients, especially marginal clients.

The potential conflicts of working with both J.D. and M.S.W. degrees are critical to discuss. As neither the *Model Rules of Professional Conduct*⁹⁰ nor the *NASW Code of Ethics*⁹¹ addresses any of the potential conflicts, social workers and attorneys who work together, but most importantly, J.D./M.S.W.s, have no guidance on how to deal with the issues that arise when their ethical codes and professional duties clash.

As previously mentioned, many of the problems that arise when social workers and attorneys work together are eliminated or partially eliminated when clients are instead served by J.D./M.S.W.s.⁹²

For instance, a J.D./M.S.W. will not need to decide with another professional on whom to focus the services.⁹³ She can decide for herself, or along with the client, to focus on the individual client or on some aspect of the client system, such as the family or

90. MODEL RULES OF PROF'L CONDUCT (2001).

91. CODE OF ETHICS OF THE NAT'L ASS'N OF SOCIAL WORKERS (1999).

92. It is helpful to keep in mind a concrete example when discussing these issues. Consider a homeless woman who has two children, all of whom are staying at a shelter that employs a J.D./M.S.W. to serve its clients.

93. The negotiation with another professional is what is eliminated here.

community.⁹⁴ A dilemma may arise, however, if the J.D./M.S.W. decides to focus on the family, with potentially divergent interests.⁹⁵

The problem of expense is certainly eased by a J.D./M.S.W. Instead of a client or organization paying two professionals, they only need to pay one. Difficulties such as schedule coordination are also eliminated, because one individual serving a client does not need to coordinate her services with anyone else.⁹⁶ The same is true of difficulties in sharing information. A J.D./M.S.W. does not need to share information with others; the practitioner is aware of all the client's information because she is the only person working with the client.⁹⁷

Discomfort due to differences in training and perspectives can be eradicated. A J.D./M.S.W. received training in both social work and law and is hopefully comfortable with both perspectives and using both sets of skills. Also, differences in status, salary, and prestige are similarly relieved to some degree. A single individual will not be faced with the comparison to a member of another field having more or less money or prestige.⁹⁸

94. In this example, the J.D./M.S.W. may decide that the homeless woman as an individual is her client and encounter no professional conflicts in helping to remove the legal and social barriers facing that woman.

95. It is perfectly acceptable for a social worker to identify a family as her client. If the two daughters, however, want and need something different than their mother, a J.D./M.S.W. cannot zealously advocate for all three. For instance, the mother may be involved in a custody battle with her ex-husband. She may naturally expect the J.D./M.S.W. to fight for her custodial rights in court. Yet, if her ex-husband is not homeless and is able to provide a stable home for the girls, the girls may like to live with him for at least a while. How does the J.D./M.S.W. advocate for their wishes as well as their mother's? Once he identifies the family as his client, how does he choose between their interests? Does this mean that J.D./M.S.W.s may only work with individual clients to avoid this impasse?

96. An additional difficulty, however, is that one individual needs to coordinate the legal and social needs of each of her clients. This challenge is not as daunting as coordinating with another professional, especially because a J.D./M.S.W. has specialized training in both fields.

97. There of course may be other professionals working with the clients in other areas. For instance, our family of three may also be served by doctors and educators and sharing of information will likely take place among these other professionals.

98. On a related note, J.D./M.S.W.s may actually feel some discomfort in this arena with either lawyers, social workers, or both. It is unfortunate because of the many extra skills they possess, but J.D./M.S.W.s are likely paid less and enjoy a lower status than typical attorneys because J.D./M.S.W.s are more likely than regular attorneys to work in the public interest arena. Also, attorneys may view J.D./M.S.W.s as "touchy-feely" and not as competitive or successful as their private, J.D. counterparts. On the other hand, J.D./M.S.W.s' social worker colleagues may see J.D./M.S.W.s as selling out to the system, or as not "touchy-feely" enough.

Another potential conflict that is eliminated is the confusion over division of tasks. There simply is no division of tasks when there is one professional serving the client instead of two.⁹⁹

The issue of self-determination versus the giving of advice, however, is not as easily resolved when J.D./M.S.W.s are involved. In fact, it is likely more problematic. Although social workers and attorneys working together may clash on this issue, they may at least follow the mandates of their respective professions to a large extent. The attorney may advise the client as to his legal issues, whereas the social worker may allow the client to make his own decisions regarding the social barriers he faces. A J.D./M.S.W., though, will need to determine when it is appropriate to help a client make and implement his own decisions and when it is appropriate to give concrete advice.

Just trying to resolve the many conflicts can lead to other unfavorable consequences for a J.D./M.S.W. For instance, the practitioner could experience a great deal of stress over these conflicts by trying to resolve them in a way that suits her, her clients, and both her professions.¹⁰⁰ She could also face disapproval from peers of both professions and from other J.D./M.S.W.s.¹⁰¹ In addition, the clients of J.D./M.S.W.s are likely to become confused when any of these issues arise.¹⁰²

Finally, the ethical dilemma faced by a J.D./M.S.W. is the most important of the potential conflicts. As discussed above, although

In addition, social workers will likely earn less money than J.D./M.S.W.s and perhaps resent this discrepancy and be uncomfortable about it. So, in a sense, though one problem is resolved (interdisciplinary discomfort), another problem may arise (J.D./M.S.W.s potentially feeling uncomfortable with both attorneys and social workers).

99. It is quite probable that because J.D./M.S.W.s are handling an entire set of client problems, the number of tasks they must complete is substantially higher than if they were focusing on only the social problems or the legal problems. It may be that J.D./M.S.W.s will need to have lower caseloads in order to rectify this imbalance.

100. This difficulty can perhaps result from having a divided sense of loyalty between the disciplines of law and social work, from worrying over how it will affect the clients, or from concern over more serious consequences she might face as a result of professional conflict.

101. If, for example, they feel that she handled an ethical situation incorrectly.

102. For example, if a client has a problem that is primarily legal, she may be accustomed to receiving concrete advice from the J.D./M.S.W. serving her. If a social problem arises, such as the need to decide whether the client will enter treatment for drug abuse, she may be confused by the J.D./M.S.W. leaving that decision up to the client and feel somewhat lost by the seemingly sudden lack of guidance.

both lawyers and social workers are called upon by their professional codes to keep their client information confidential, the exceptions to those confidentiality rules differ greatly.¹⁰³ Confidentiality rules depend in part on the jurisdiction. According to the *Model Rules of Professional Conduct*, attorneys are only allowed to disclose otherwise confidential information in the following situations: (1) when a client consents;¹⁰⁴ (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”¹⁰⁵; and (3) to establish or defend a claim related to the attorney’s relationship with the client.¹⁰⁶ Disclosure at these times is discretionary, not mandatory. Social workers, however, are not only allowed to disclose otherwise confidential information for certain reasons (namely, if a client consents or if it “is necessary to prevent serious, foreseeable, and imminent harm to a client or other identifiable person”¹⁰⁷), but they are in fact encouraged to disclose the information in situations of potential harm.¹⁰⁸ Besides following the *NASW Code*, social workers are often mandated by law to disclose otherwise confidential information in certain situations, such as abuse of children or the elderly.¹⁰⁹ These consequences are severe. In addition to stress, colleagues’ disapproval, and client confusion, a J.D./M.S.W. may face fines, sanctions, malpractice suits, and criminal penalties for failing to comply with mandatory reporter laws.¹¹⁰

These high stakes make it critical to resolve these conflicts. Currently, the two professional codes do little to help.¹¹¹

103. See *supra* text accompanying notes 76-80.

104. MODEL RULES OF PROF’L CONDUCT R. 1.6 (2001).

105. *Id.*

106. *Id.*

107. CODE OF ETHICS OF THE NAT’L ASS’N OF SOC. WORKERS § 1.07 (1999).

108. *Id.*

109. See *supra* note 83.

110. Glynn, *supra* note 5, at 656.

111. See *supra* note 84. It is also important to note that in the legal services context, perhaps the arena with the greatest collaboration between lawyers and social workers, many organizations have taken the approach that social workers simply must comply with the attorneys’ code regarding client confidentiality. Moynihan, *supra* note 58, at 62. Yet, nothing in the *NASW Code* suggests that social workers may value cooperation with other professionals to the point of overriding their duty to individual clients and other members of the community. *Id.*

III. POTENTIAL SOLUTIONS

The first conflict that needs to be addressed is the difference in focus. As mentioned above, while attorneys typically represent only individuals,¹¹² social workers may represent individuals, families, groups, or even communities. When a J.D./M.S.W. decides to represent a family or group, problems may arise.¹¹³ In this situation, a J.D./M.S.W. cannot zealously advocate for the differing legal interests of each family member. Nor is it fair or feasible for a J.D./M.S.W. to choose one of the family member's legal issues and advocate for that member after already identifying the entire family as a client. This potential conflict does not mean that J.D./M.S.W.s may only work with individual clients, however. Rather, they must use both compromise and forethought to satisfy their dual obligations.

One possible solution is that a J.D./M.S.W. could work only with individuals on legal issues but provide social services to individuals, families, groups, or communities with no conflict. This solution, however, may be tricky because legal issues may arise even if the practitioner intends only to provide social services. A thorough intake interview and analysis, as well as considerable discussion with the client about this predicament, could help alleviate the problem. Another option is for J.D./M.S.W.s to limit group work to groups in which the individuals have very specific and conforming goals. Additionally, a J.D./M.S.W. could identify a number of other professionals who could step in should any conflicts of interest

This approach not only devalues social workers' professionalism but also does not protect social workers who follow this advice and are later accused of violating mandatory reporting laws or are sued for failing to warn. *Id.*

112. It is true that attorneys may also represent entities, e.g. corporations. They, however, represent those entities as though they are individuals and do not also represent the individuals that compose the organization. See MODEL RULES OF PROF'L CONDUCT R. 1.13 (2001). Also, it is important to recognize that class-action lawyers are a completely separate thing and beyond the scope of this Note.

113. See *supra* note 96 (discussing the problems that may arise). If the two daughters want and need something different than their mother, a J.D./M.S.W. cannot zealously advocate for all three. For instance, the woman may be involved in a custody battle with her ex-husband. She may naturally expect the J.D./M.S.W. to fight for her custodial rights in court. Yet, if her ex-husband is not homeless and is able to provide a stable home for the girls, it may be that they would like to live with him for at least a while.

arise.¹¹⁴

The second potential conflict that merits attention is the inconsistency between social work's value on self-determination and the law's need to provide advice. As the analysis section of this Note makes clear, attorney-social workers will need to determine when it is appropriate to encourage a client to make and implement his own decisions and when it is appropriate to give concrete advice to a client.

A J.D./M.S.W. can take one of two approaches in resolving this conflict. First, he can determine in advance, ideally with the input of the client, whether the services will be primarily legal or primarily social services. If they are primarily legal, the J.D./M.S.W. can simply advise the client when necessary. If they are primarily social, the J.D./M.S.W. can implement client self-determination to the fullest extent. This approach seems unwieldy and not particularly helpful or true to either profession. Instead, a second approach may prove to be much more appropriate. The J.D./M.S.W. can consciously evaluate each stage of the process and confer legal advice whenever appropriate.¹¹⁵ The distinction will often be very clear, and it is only the rare occasion where the practitioner will encounter problems. In that case, she should just rely on her best judgment.¹¹⁶

Finally, the ethics conflict is the most important potential conflict, both because of how often it arises and because of the high stakes often involved. Because the consequences to these conflicts can be so severe,¹¹⁷ it is extremely important that uniform provisions are adopted to protect the practitioners (J.D./M.S.W.s as well as attorneys

114. Again, these approaches should be discussed carefully with the clients at the very beginning of any provision of services.

115. Going back to the example of the homeless mother, *supra* note 92, when discussing social service goals such as housing, employment, and mental health, a J.D./M.S.W. would pursue the mother's self-determination, encouraging her to come to her own decisions (e.g. "I will go back to school so that I can get a decent job someday") and helping her implement those decisions (talking with her about nearby schools, General Education Development (GED) programs, tuition assistance, child care, etc.). When discussing legal issues, however, the J.D./M.S.W. would give actual advice to the mother, e.g. "I recommend that you accept this offer of child support because the judge is not likely to order any more than this amount."

116. That ability will get easier with practice. Post-client-involvement evaluation could be helpful in determining the success of this approach.

117. See *supra* text accompanying notes 88-89.

and social workers who work together in teams), the clients, and the professions.

Most importantly, the professional conduct codes need substantial changes. Such changes can take one of two forms. First, professions, legislatures, and courts can acknowledge the unique difficulties faced by multidisciplinary practitioners and work together to come up with a compromise that will apply to professionals that are involved in interdisciplinary practice.¹¹⁸ Such a solution will likely involve only minor revisions to the professional codes, such as an added section on the ethical bounds of interdisciplinary work.¹¹⁹

Second, professions, legislatures, and courts can resolve the inconsistencies in the treatment of different professions and treat all regulated professions consistently unless there is an overriding justification for certain distinctions.¹²⁰ Each profession needs to re-

118. The A.B.A. Commission on Multidisciplinary Practice addressed this compromise unsuccessfully (although the unique situation of the J.D./M.S.W., as opposed to teams of attorneys and social workers, was not explicitly addressed). *See supra* note 84.

For future efforts to be successful in front of the A.B.A., J.D./M.S.W.s and attorneys who work with social workers need to be involved in a substantial lobbying of the professional organization. In addition, their attorney colleagues could be called upon to lend their support to the cause by recognizing that the world will increasingly be interdisciplinary and someday these same issues will affect all attorneys.

In addition, the National Association of Social Workers will need to be more explicit and concrete in their guidelines. The field of social work is in a unique position: it can lead the way to an increased understanding of what is necessary for interdisciplinary practice to succeed. Social work is especially equipped for this position, as social work itself is really a mix of so many different fields: sociology; psychology; medicine; education; law; economics; and more. Social workers need to lobby their professional organization for these changes. With the advocacy and organizing skills social workers possess, this goal can be achieved.

119. For instance, a new section of the *Model Rules of Professional Conduct* might state that when attorneys work with or as social workers, they must also act as mandated reporters of child abuse. In my view, it is not unreasonably problematic to include an exception to the confidentiality rules of attorneys when child abuse is a factor. Few complaints are made of the fact that such an exception exists to safeguard the attorney in case of a lawsuit or unpaid bill. If the rationale behind attorney-client confidentiality does not preclude such an exception to safeguard attorneys, I see little reason why it would preclude an exception to safeguard children.

Alternatively, a section could be added to the *NASW Code of Ethics* stating that when social workers work with or as attorneys, they are held to a higher standard of client confidentiality (though this solution is more problematic because of mandated reporter laws and would probably require some changes in the law).

120. Glynn advocates this more drastic approach, *supra* note 5. He proposed a confidentiality statute that could apply consistently to lawyers, social workers, doctors, and psychologists:

evaluate the reasons for its confidentiality codes and determine anew whether the goals are met by the codes.¹²¹ This change will most likely be slow in coming, if it ever comes at all, as the professions are likely to be resistant to giving up their current code provisions.¹²² Implementing consistent statutes, however, is the perfect solution because it will give all practitioners a clear understanding of their obligations to both the state and to their profession(s), while at the same time allowing them to provide their clients a clear definition of

(a) A licensed professional shall not reveal information relating to a client relationship unless the client consents in writing after consultation, except as stated in paragraph (b).

(b) A professional may reveal information relating to a client relationship to the extent the professional reasonably believes necessary:

(1) to provide needed professional services to the client, such as a disclosure to a co-worker or subordinate of the professional;

(2) to protect the client or others from imminent death or substantial bodily harm, provided such disclosures are limited to that necessary to accomplish the protection;

(3) to report to the state's child abuse registry that the client has abused or neglected a child, or if the client is a minor, that the client has been abused or neglected, provided such a disclosure is limited to the initial report and investigation; or

(4) to establish a claim or defense on behalf of the professional in a controversy between the professional and the client, to establish a defense to a criminal charge or civil claim against the professional based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the professional's relationship with the client, provided such disclosures are limited to that necessary to achieve the stated purpose.

Id. at 653-54. This statute encompasses a shift from mandatory to discretionary reporting for all professions. Glynn proposes, however, that the "discretion could be limited to certain professions which the state recognizes have a certain level of competence necessary to make these difficult case-by-case analyses." *Id.* Presumably, attorneys would be in this category. If social workers are not, then J.D./M.S.W.s can simply apply the statute as if it was mandatory and still satisfy the requirements of both fields.

121. One leading commentator already questioned the legal profession's unwavering commitment to confidentiality and suggested that the Code's strict confidentiality rules go too far. Fred C. Zacharias, *Rethinking Confidentiality*, 74 IOWA L. REV. 351 (1989). Zacharias performed a study that revealed widespread misunderstanding on the part of clients regarding confidentiality, suggesting that many of the justifications for such strict confidentiality (e.g. it is necessary for clients to feel they can be honest) are not true. *Id.* at 381. Zacharias suggests instead that it is "the general sense of trust in attorneys as professionals—rather than particularly strict confidentiality . . . [that] fosters client candor." *Id.* at 386. He calls for further research to determine whether the *Model Rules of Professional Conduct* should be amended. *Id.* at 396.

122. This resistance is demonstrated by the A.B.A.'s reaction to the Commission on Multidisciplinary Practice's Recommendation. GILLERS & SIMON, *supra* note 84, at 1054.

confidentiality and its exceptions.¹²³ This option will especially benefit multidisciplinary service providers in their attempt to navigate the conflicts in professional codes.

Again, if such systemic change is ever going to occur, interdisciplinary practitioners, as well as the fields as a whole, need to support these solutions and advocate strongly for changes to both their professional organizations and their political representatives.

In the meantime, several potential solutions are available to J.D./M.S.W.s and their interdisciplinary team counterparts. Unfortunately, none of these possible solutions is perfect. In fact, each leaves a J.D./M.S.W. open to some form of discipline. Yet, until professional codes and state statutes provide otherwise, these are among the most viable options.

First, a J.D./M.S.W. can identify herself as either primarily an attorney or primarily a social worker and align herself with that field's ethics and goals. This approach is probably the most common current approach and perhaps the safest in terms of protection from sanctions. For many J.D./M.S.W.s, this solution will be entirely adequate.¹²⁴ For a great number of people, however, it might be very difficult to choose which profession's code to follow.¹²⁵ In addition, choosing one profession may cause one to feel like they have betrayed the other. This approach seems to ask a J.D./M.S.W. to ignore or minimize all the skills gained in her other degree program and focus on one profession. That choice hardly makes having the two degrees worthwhile and has the effect of minimizing the client's benefits. Finally, who is to say that others would agree with the J.D./M.S.W.'s characterization of his job?¹²⁶

123. Glynn, *supra* note 5, at 656.

124. This solution is especially true of J.D./M.S.W.s who really do only work as either an attorney or a social worker. A J.D./M.S.W. who is a partner in a corporate law firm probably has no need to concern herself with the *NASW Code of Ethics*, as she is working strictly as an attorney.

125. For instance, how does a J.D./M.S.W. who works at a homeless shelter and assists clients with both social and legal problems identify himself as one or the other? In such a setting, the two professions are almost inseparable.

126. If a J.D./M.S.W. aligns himself with the social work profession, but a client sees him as his attorney, conflicts could arise. In addition, a court or professional ethics committee might not agree with the J.D./M.S.W. and may decide he should be liable for failing to follow legal ethical guidelines.

Second, J.D./M.S.W.s can handle potential ethical conflicts by discussing the situation in advance with clients so that they are aware of potential conflicts and letting the clients decide how to handle conflicts should any arise.¹²⁷ This solution will at least protect against malpractice suits, and it also seems less likely to result in unsatisfied clients reporting J.D./M.S.W.s to professional conduct boards. It must be noted, however, that should the client choose to abide by the *Model Rules of Professional Conduct*, a social worker is still open to civil and criminal sanctions under the mandatory reporting statutes.¹²⁸

Third, J.D./M.S.W.s can adopt the least restrictive non-disclosure rules. This potential solution will most likely mean that a J.D./M.S.W. will be a mandated reporter under state law and will not keep the strict client confidentiality mandated by the legal profession. This option is plagued with several problems. First, it leaves the practitioner open to sanctions by the legal profession for violating the *Model Rules of Professional Conduct*. Second, if the oft-cited justifications for strict client confidentiality are valid, this approach may jeopardize the practitioner's relationship with the client, as the client would be less likely to trust the J.D./M.S.W. and, therefore, less likely to share potentially damaging information with the J.D./M.S.W.¹²⁹

Fourth, J.D./M.S.W.s can synthesize the two fields and create their own guidelines. Of course, this approach is the hardest to take because it involves a great deal of work. It is, however, the most individualized and perhaps the best suited to a J.D./M.S.W. who really is an amalgamation of two different disciplines. Again, this approach leaves the practitioner open to sanctions from both professions and possibly from the state in which he practices. Yet, assuming the J.D./M.S.W.'s job really combines law and social work,

127. It seems likely that clients would opt for the stricter rules, those that allow for greater client confidentiality, so that they feel more like they can trust the J.D./M.S.W. Consequently, this option seems equivalent to following the legal standards.

128. See *supra* note 84.

129. Hopefully, the client will be informed in advance of any problems where the J.D./M.S.W. will be acting as a statutorily mandated reporter. This response means that the client may hold back potentially important information so as to avoid being reported. It is also possible that the client could misunderstand or forget this discussion, share information with the J.D./M.S.W. that the J.D./M.S.W. has to report, and then feel betrayed by the J.D./M.S.W. when he does report it.

it may also be a successful defense to any sanction proceedings to argue that there really was no other option for a J.D./M.S.W. than to try to carve out some guidelines for herself, since her professions refuse to do so for her.¹³⁰

Of these four options, it is best for each J.D./M.S.W. to decide which approach best suits her based on her own practice and clients and what conflicts are most likely to come into play. Additionally, each person knows how comfortable she would feel handling those situations in certain ways.

IV. CONCLUSION

None of the four currently available options for J.D./M.S.W.s facing ethics conflicts is ideal. A response from the professions, the states, and the courts is imperative to adequately resolve these issues.

It is equally clear, however, that the benefits a J.D./M.S.W. brings to her clients are invaluable. For the sake of helping these people and achieving justice, it is critical that practitioners attempt to maneuver through the difficulties until a better solution is achieved.

130. Of course, I am neither advocating breaking the law nor violating either profession's ethical code.