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**VEXING STAKEHOLDERS
PARENTS**

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VEXING STAKEHOLDERS – PARENTS

Parents have a constitutional right to direct the care, education, and upbringing of their children; and positive parent involvement is an important element of a successful school community. Alternatively, when fixated on negative attention, these stakeholders can create significant disruption and generate substantial legal fees, to the detriment of the school program. This outline reviews the Texas Disciplinary Rules of Professional Conduct that guide school attorneys as they seek to advise their school district clients on dealing with vexing parents.

I. Ethical Issues Related to Dealing with Vexing Pro Se Parents

The following Rules may be particularly applicable when dealing with a pro se parent who may be intimidated by the legal process and unfamiliar with an attorney's role. Regardless of the legal experience of the opposing party, an attorney still has an obligation to provide zealous client representation. Compliance with the following rules ensures such representation does not result in unfair or unnecessary harm.

A. Even when dealing with a vexatious parent, the school attorney should be mindful the parent is likely unfamiliar with the legal process.

1. Rule 4.03 reminds us that non-attorneys may be unfamiliar with an attorney's role and obligations to the attorney's client. The rule prevents an attorney from using a pro se party's inexperience unfairly. The rule states:

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

2. Although we may expect a parent to understand that the school district's attorney is committed to serving the interests of the district, the comments to this Rule remind us that an unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties, particularly as an authority on the law.
3. Unrepresented parents may ask the school district's attorney for guidance on complying with procedural requirements or ask for clarification about issues of law. They may even ask for information or advice regarding their claim, as well as other, unrelated legal issues they may have. It is important for the school attorney to be mindful of the obligation not to make any statements to a pro se parent that could be interpreted as legal advice. While a lawyer is representing a school district, the lawyer should not give advice to an unrepresented parent other than the advice to obtain counsel.

4. To support the attorney's compliance with these expectations, it is recommended that all communications are documented in writing, including following up phone calls or other conversations with a written account of the verbal communication. This gives the pro se parent the opportunity to let the attorney know if the parent's understanding of the conversation was different from the attorney's account.

B. The school attorney owes a duty of truthfulness to all persons.

1. Rule 4.01 prohibits both overt misrepresentations of material fact or law, as well as omissions that will result in the lawyer inadvertently or knowingly becoming a party to criminal or fraudulent activity. The rule states:

In the course of representing a client a lawyer shall not knowingly:

- (a) *make a false statement of material fact or law to a third person; or*
- (b) *fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client.*

2. False Statements of Fact

- a. Rule 4.01 refers to statements of "material" fact. The comments to Rule 4.01 provide that whether a particular statement should be regarded as "material" can depend on the circumstances.
- b. The comments further clarify that certain types of statements, although material to a particular matter, are not considered to be statements of material fact because they are generally viewed as statements of opinion. As an example, the comments refer to estimates of price or value placed on the subject of a transaction. But, statements of opinion could also relate to the appropriateness of certain educational services.
- c. Additionally, parties involved in negotiation generally understand that statements related to what a party may consider to be acceptable settlement terms may be viewed merely as negotiating positions rather than as accurate representation of material fact.

3. Affirming False Statements by Another Person

- a. A lawyer violates Rule 4.01 by making a false statement of material fact or law or by incorporating or affirming a statement made by another person. But a lawyer only commits misconduct if the lawyer knows the statement is false and intends thereby to mislead. The comments do not address the extent to which a lawyer may be expected to correct a statement of material fact shared with a third person if the lawyer later discovers the statement is false. However, the Rule also prohibits a failure to disclose, if disclosure is necessary to prevent the lawyer from becoming a party to a criminal or

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