

Law in Social Work Practice

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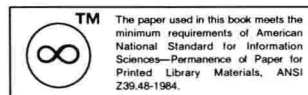
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INTRODUCTION

Since the earliest days of the profession, social workers have been learning about the law and using their knowledge of it to benefit their clients. Since the earliest days of the profession, social workers have found many ways to work within the legal system to further their clients' interests. And the involvement of social workers with the legal system, along with the number and types of roles they play in it, has been steadily growing.

In the course of reading this book, you will learn many roles that social workers have played and can play within the legal system. You will learn that, whatever your speciality as a social worker, you may be able to assist your clients by working in the legal system. You may not be doing all you can for your clients if you do not make use of all available resources—including the legal system. But even if you are never involved with the legal system in your career as a social worker, you still have to learn about the law for several reasons.

The law shapes and regulates all social work practice, whatever form the practice takes. In many States, the law defines who can practice social work and specifies the tasks a social worker can perform. The law may give social workers certain legal rights or may impose certain legal obligations on them. For example, laws in some States give social workers a right to keep client records confidential and laws in every State obligate

social workers to report suspected child abuse. The law may also make social workers accountable for certain actions they take on their jobs. For example, clients who believe their social workers injured them through poor practice may be able to sue their social workers for money damages and social workers who fail to report suspected child abuse may be criminally prosecuted.

Just as the social worker's practice may be shaped and regulated by the law, **the lives and actions of social workers' clients may be controlled and restricted by the law**. Social workers have to be aware of the laws which affect their clients in order to assist them effectively. For example, a hospital social worker, in order to arrange for a patient's aftercare, might have to know whether the law allows an adult child to admit a parent to a nursing home against the parent's will or a social worker in a shelter for battered women, in order to help a battered woman make an appropriate decision, might have to know whether the woman risks losing custody of her children if she temporarily leaves them with her husband.

This does not mean that social workers should act as lawyers and dispense legal advice to clients. It means, however, that **social workers have to know when the law affects their clients and when it is necessary for their clients to consult lawyers**. This brings us to another reason why social workers must

know the law: **knowledge of the law enables social workers to recognize certain problems of their clients as legal.** Recognizing a client's problem as legal and making a referral to a lawyer may be the most important service a social worker can perform for a client. As has been stated:

“Too many clients in the past have endured the painful consequences of festering or unsolved legal problems because neither they nor the social worker recognized the problem as a legal one or knew what to do about it.”¹

People who seek the assistance of social workers or whom social workers seek to assist often have legal problems in addition to their social problems. Their legal and social problems may be intertwined; they may not be able to be resolved independently. For example, a social worker cannot effectively assist a woman with Alzheimer's disease who has come to him for help in facing the disease and ultimately for help in coping with daily living without discussing the need for a legally appointed guardian who can make decisions for the woman when she can no longer make them herself. To give another example, an alcoholic may have several legal problems which will affect his treatment for alcoholism and his well-being. He may be facing a charge of drunk driving and eviction from his home because of his alcoholism. He needs the assistance of both a lawyer and a social worker to resolve these problems.

This interdependence of legal and social problems often requires lawyers and social workers to work together to resolve a client's problems. This is another reason social workers must know the law. **Social workers must**

be able to communicate with lawyers in order to work successfully with them. The social worker must speak the lawyer's language. That language is the law.

Social workers also need to know the law because **the law clothes social workers' clients in certain rights.** Social workers must recognize and respect these rights which clients can be forced to shed only in accordance with the law and in conformity with legal procedures. For example, a drug addict has a right to refuse to enter a treatment program; her social worker cannot force her to enter the program against her will—unless certain legal standards are met and certain legal processes are completed. To give another example, an unwed teenage mother has a right to keep her child; her social worker cannot place her child for adoption—again, unless certain legal standards are met and certain legal procedures are followed.

Finally, social workers need to know the law not only because it gives their clients certain legal rights but also because **the law gives others whose lives are affected by social workers' actions certain legal rights.** Social workers cannot ignore these rights. For example, even if an unwed mother client agrees to the adoption of her child, her social worker may not arrange for the adoption without considering the rights of the child's father. If his rights are ignored, any adoption arranged by the social worker may be invalid.

In short, whatever your field of practice as a social worker, you should know the law to help your clients and to do your job effectively and legally. Unfortunately, the law on a given subject is rarely a simple rule which can be easily determined and learned. The law is a complex web of concepts, principles, rules, standards, tests, practices, customs, traditions and modes of thinking and reasoning. It is a vast body of material coming from many sources which must be interpreted be-

1. Michael Zander, *Social Workers, Their Clients and the Law*, (Sweet & Maxwell: London 1981), p. vi.

fore it can be applied. It is more process than precept. It is more reasoning than rule.

Even laws that seem to be simple rarely provide simple answers to legal questions. Many seemingly simple laws are difficult to apply to particular fact situations and are not easily used to resolve particular problems. Many seemingly simple laws have hidden qualifications, exceptions and conditions. Think about the commandment: "Thou shalt not kill," which translates into the law: "Killing another person is a crime." This seemingly simple law is not always simple to apply, has many exceptions, and leaves many questions unanswered. For example, is it against the law for a woman to kill a man who raped her? Does an eleven year old boy who kills a friend commit a crime? Can a doctor who heeds a patient's wish to disconnect life support systems be prosecuted for killing the patient? And even those laws that are simple rules which provide unqualified answers to legal questions may be in language completely unfamiliar to you or contain terms that are completely unknown to you.

You, thus, will not know the law essential to your practice if you are simply handed a few laws or are provided with the key to a law library. Learning the law is more difficult than that.

Similarly, learning how the legal system operates and how those who run the legal system—lawyers—think is difficult. The American legal system is complex. It is made up of many different legal systems, each of which is as complex as the law which creates it and governs its operation. The American legal system is often mysterious to those outside of it. It operates in a way that is quite different from other institutions with which social workers are familiar. Lawyers have a unique way of thinking and of approaching their work. Both are very different from the

way social workers are taught to think and to approach their work.

Although learning about the law and the legal system may be difficult, achieving an understanding of them is far from impossible. Many social workers assume that because the law is complex and often written in unfamiliar language, the law is unknowable. Many social workers assume that because the legal system is complex and is run by lawyers, the veils shrouding the legal system are impossible to lift. Neither assumption is true. The law can be found, read and understood by nonlawyers. You, like many social workers in the past and in the present, can lift the veils shrouding the legal system and play important roles in it.

This book is designed to make the law and the operation of the legal system less mysterious to you. It is also designed to improve your legal skills and practices and to enable you to work effectively in the legal system. To these ends, the book begins by providing an overview of American law and the American legal system. In the course of providing this overview, it presents and defines basic legal concepts and terms, decodes the process known as legal reasoning, reveals some aspects of the hearing process and social workers' roles in that process, provides guidance on effective social worker testimony, explains the fundamentals of legal research, sheds some light on constitutional rights and principles, and discusses the criminal law and social workers' roles in the criminal justice process. In other words, in the introductory chapters, the book sets forth the **how, what, where and why** of the law and the legal system in an attempt to give you the grounding necessary to understand specific areas of the law and to operate within specific parts of the legal system.

The book then discusses the specific areas of the law which are most relevant to social

work practice: juvenile law; education law; family law; and mental health and health law. It concludes by discussing the laws which directly regulate the practice of social work. In these discussions, general principles, basic concepts, issues, problems and trends are emphasized rather than descriptions of the law. Where the law is presented, to give you practice in understanding the law as you will find it in your work, excerpts from primary sources of the law—mostly court opinions and statutes—are often presented rather than summaries or paraphrases of the law.

The book's approach is designed to enable you to find, figure out and use the law by yourself. Through the book's approach, you should learn how to recognize when a law may be significant to your practice, how to find this significant law, how to understand it when you find it, and, most important, how to use it in your practice. The book's approach is somewhat like giving you a good road map to enable you to get around in unfamiliar territory instead of giving you detailed directions.

This approach is not easy. It can be frustrating. But in the long run it is the best approach to the study of law and the legal system for several reasons.

As we have said, the model of the law as a collection of simple rules which can be committed to memory is far from reality. Further, any rules that do exist may differ from place to place and may change rapidly over time. In addition, there are so many laws which may be relevant to social work practice that it would be impossible for this book to present them all and for you to learn even those relevant to your particular practice. With a basic understanding of the law and of legal principles, however, you should be able to absorb current laws necessary to your practice quickly and easily.

As we have also said, the American legal system is a complex system made up of many different legal systems which take on different forms in different places and which change over time. You will only gain understanding of this complex system and be able to operate effectively within it if you have a basic understanding of the law and of the general principles that control the legal system's functioning—no matter how many specific laws relevant to your work and how much about court procedures you might have learned in your classes related to your field of practice or on the job.

Finally, and perhaps most important, skills acquired in locating, analyzing and interpreting the law remain long after specific laws fade from memory. You can still understand the law after you have forgotten particular laws.

It is necessary to comment, not only on the approach of this book, but also on how you can use the book most profitably.

First, you should use this text in conjunction with the laws from the State in which you practice or intend to practice. As we have said, the laws may differ significantly from place to place. We will provide examples of laws from many States in this book, but the laws of the State in which you practice, not the laws given to you as examples in this book, govern your practice. It is essential that you be familiar with your State's laws.

Second, although learning the law requires you to learn many unfamiliar terms, this book does not provide you with a traditional glossary. A law dictionary would, thus, be a valuable asset. This book does, however, put all unfamiliar legal terms in **bold print** the first time they appear or whenever they are defined for you. All such terms are then included in a special Glossary Index which you can use to locate the definitions and see how

the terms are used in context when you next encounter them. Seeing unfamiliar terms used in context may be more useful to you than reading a glossary or law dictionary definition.

Last, while this book includes many excerpts from statutes and court opinions to help you become familiar with legal writing and reasoning, the excerpts are substantially edited and omit many parts of statutes and court opinions you will find in a law library. You may want to read the full statutes and opinions to get a fuller picture. Further, you should understand how we excerpt court opinions so you will not be confused when you read real opinions.

When we excerpt a court opinion for you, and even when we give you relatively short quotations from court opinions, we will delete most citations to authority and most footnotes. These deletions will not be indicated. Other deletions within sentences will be indicated, but deletions of whole sentences, paragraphs or even several pages will not be indicated. What appears as one sentence or

paragraph may actually be drawn from two sentences or several paragraphs, but the order of sentences and paragraphs will not be altered. Substitutions of terms and explanatory matter will be placed in brackets. Where there is just a substitution of terms, no deletion will be indicated. Where a sentence begins with a bracketed capital letter (as "[T]he"), there has been a deletion at the beginning of the sentence. Footnotes from the opinion which are retained will be indicated with the symbol *. Long explanatory matter we have written will be included in a footnote instead of in brackets and numbered as other footnotes to the text. Text of particular importance within the excerpts will be emphasized. Any emphasis by the court in the original opinion will be underlined in addition to being emphasized. Internal quotations in the opinions will be indicated with a single quotation mark. The sources of internal quotations will generally not be indicated, but most are from court opinions. Any deletions made by us, not the court, in the quotations in an opinion will be indicated by three asterisks (* * *).

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This chapter introduces you to the American legal system and describes the ways laws are produced by this system and the kinds of laws that are produced. It also tells you how you can change the laws that affect your clients.

WHAT IS THE LAW?

“The law” can be defined as those standards, principles, processes and rules, usually written down in some manner, which are adopted, administered and enforced by a governmental authority and which regulate behavior by setting forth what people may and may not do and how they may do what they can do. Put more simply, the law consists of “those guides to social conduct which are created and enforced by public officials.”¹

The keys to these definitions of the law are the phrases “by a governmental authority” and “by public officials.” The involvement of government is what makes laws unique among rules of behavior. There are many rules that guide behavior, but only those rules that are adopted and backed by the authority of the government are rules of law. For example, you probably obey the rule that you must wash your hands before you serve dinner, the rule that you should wipe your mouth on your napkin, not your sleeve, while you eat dinner, and the rule that you may not make love with your neighbor’s spouse after you finish dinner, but these rules may only be rules of health, of etiquette and of morality, not rules of law prescribed by a government. You may obey these rules, not because of any government sanction, but because of your

training, social pressure, habit, your personal morality and beliefs, or a myriad of other reasons. Sometimes rules that you obey for such reasons are also rules of law. For example, a city ordinance may require restaurant employees to wash their hands before serving food, and a statute may make adultery illegal. But these rules do not become rules of law unless and until a governmental authority adopts them and they are backed by the authority of government. They are not considered part of the law until this occurs.

Laws are generally adopted when it is believed that rules of behavior should be backed by governmental authority, because either the rules serve an important societal purpose or are necessary for the safe and healthy functioning of society. Laws should change when beliefs change or society changes. As stated by Justice Oliver Wendell Holmes:

“It is revolting to have no better reason for a rule of law than that it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past.”²

Laws do not work when the people do not believe in them or they do not fit well with the functioning of society, but sometimes laws should mold, rather than reflect, public opinion or should operate to change the functioning of society. For example, laws forbidding discrimination on the basis of race may be adopted to change beliefs about the races and to end the widespread practice of discrimination.

Laws may be categorized in a variety of ways. First, they may be categorized in terms of how they regulate behavior. When you think about the law, you probably think about those rules

1. James L. Houghteling, Jr., *The Dynamics of Law* (Harcourt, Brace & World Inc.: New York 1968), p. 5.

2. Oliver Wendell Holmes, “The Path of the Law,” *Harvard Law Review*, Vol. 10 (1897) p. 496.