

COUNSELLORS AND SUBPOENAS: A Practical Guide for counselors served with Subpoenas 3rd Ed. Women's Legal services, NSW 2004 (35 pages)

What would you do if you were served a subpoena to produce your case notes in court on a particular client?

If you've never had to deal with subpoenas you may be tempted to ignore this publication-but let me urge you to reconsider.

The criminal justice system and the family court system serve our community to help people resolve disputes or to punish those who break the law. Being a counselor in this day and age-like it or not involves the scary and anxious reality of being caught up in the legal proceedings of our clients from time to time.

When lawyers believe that a client's counsellor may have valuable information for their case, they will subpoena her/his notes, records, and in some instances, even the counsellor themselves. In general, once a subpoena is served on a counsellor, it must be obeyed or you can be charged with contempt.

This booklet lays out, in very clear and precise way without it being in legalistic jargon (after all, it was written for counsellors to understand!) where counsellors stand.

I highly recommend this publication to all counsellors practicing in private practice and to counsellors working in organizations (although in those organizations managerial & supervisory responsibility should already have attended to these issues). Put simply, in the eyes of the law, ignorance in these matters is no excuse.

So what does this book contain?

There are two sections to the book:

Part 1 deals with Criminal Proceedings – where the Department of Public Prosecution (DPP) take offenders to court to prosecute them for criminal matters such as murder, theft, rape, assault or abuse just to name a few. In instances like this counsellors notes may be subpoenaed either to aid the case of the prosecution, or to aid the case of the defense.

Either way, counsellor's notes have a different status of confidentiality in criminal proceedings than in Family Law. Here, the right of confidentiality of the client' is sometimes denied for the greater right of the community at large to be safe from criminal behavior.

This is particularly pertinent in cases of child abuse, statutory rape, and domestic violence. Many of our members work with clients that have been the victims of criminal behavior and some work with perpetrators as well. Issues that will affect counsellors are informatively and sensitively discussed.

Part 2 deals with Family court Proceedings. In the Family Court, civil matters are dealt with where there is no DPP presence, and where civil matters (i.e. One citizen having a grievance with another like in the case of divorce settlements) are decided. Here, often the main focus for the law is what's in the best interest of the children.

Confidentiality issues around the disclosure of the content of counsellor's case notes here take on an almost sacrosanct status and dealing with subpoenas follows different interpretations of the law.

This publication explains simply yet accurately all the in's and out's of dealing with subpoenas in the Family court. Often there are good arguments used to produce counselling records and there are good reasons not to.

Do you know what your responsibilities are in these in stances and do you know what your rights are?

Would you know what to do what procedures to follow?

Would you know what you could do if you did not want your notes to be used in court?

Would you benefit from having some draft letters to help address your concerns?

Do you know how to keep "court-friendly" notes, and how long to keep them?

All these questions, and more, are answered in the publication.

Copies of this publication are available for \$15.00 (plus handling & delivery) from the Women's Legal Service NSW

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