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Ethics Alive! Responding to NASW's Professional Review Process

Part 2 of a 2-Part Series

by [Allan Barsky](#)

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by Allan Barsky, JD, MSW, PhD

(Editor's Note: This article is Part 2 of a 2-part series. See the Fall 2019 issue for [Part 1, on initiating the NASW Professional Review Process.](#))

You've got mail. Unfortunately, unlike the mail in the movie of the same name, this letter is not part of an email romance. It is a letter from the Office of Ethics and Professional Review of the National Association of Social Workers (NASW) letting you know that a client or other person has issued a request for professional review (PR). The request claims you have breached the Code of Ethics. What do you do? Panic? Become angry? Feel defensive? Regardless of the feelings you experience, you may need time to process them. You may also want to consult with a colleague or supervisor who can help you process these feelings. This article is not about how to process your feelings, but rather, about the practical steps you may take to respond ethically and effectively to this request for PR.

Remember that the NASW's PR process is one of the ways in which the NASW promotes ethical practice, holds social workers accountable, and provides clients and others with an avenue for redressing ethical concerns about social workers. We should respect clients' rights to have their concerns addressed. Also, we should be open to the PR process as a means of resolving concerns in a collaborative manner.

Note that most cases accepted for PR go through a mediation process, not a court-like adjudication process. Only some of the more serious allegations, including allegations of sexual relations with clients, go directly to a hearing process. If mediation does not result in agreement, the case may be referred to a hearing. Accordingly, it may be in your and your client's best interests to resolve the concerns through mediation.

Know that a PR request does not necessarily result in a professional review process. Upon receiving notification of the PR request, you will have 14 days to respond to the PR request. Your response is very important, because it will be used by the NASW's Intake Committee to help determine whether to

proceed with PR. Along with the notification of the PR request, you will receive the complainant's statement of alleged breaches of the NASW (2018) Code of Ethics, a copy of the NASW (2012) Procedures for Professional Review manual, the complainant's pledge of confidentiality, and forms that you are to submit in response to the complaint. You may feel overwhelmed or uncertain about how to respond. You may, however, request an NASW consultant to help you through the process, including how to complete your written response.

NASW Consultants vs. Personally Hired Attorneys

An NASW consultant is a trained volunteer whose role is to guide you through the process, providing you with information and support. The consultant is not an attorney and may not provide legal advice. If you believe that you need an attorney, you will need to hire your own attorney. If you decide to hire an attorney, check with your liability insurance company to determine whether your policy covers legal fees to defend a PR complaint. Note that attorneys are not permitted to participate "in person" during an NASW mediation session or hearing. The focus of PR is to determine whether corrective actions are needed. It is not intended to be a punitive process, although sanctions such as suspension or revocation of NASW membership may be imposed when patterns of serious ethical infractions are proven (NASW, 2012).

In some instances, clients initiate multiple actions against social workers at the same time—for instance, an NASW complaint, a licensing grievance, and a malpractice lawsuit. If you are facing a potential licensing grievance or malpractice lawsuit, you may be wise to consult an attorney. If you are just facing an NASW complaint, you may not need an attorney. Consider the seriousness of the allegations and potential consequences when considering whether to hire an attorney.

Responding to a Request for Professional Review

As you, with the aid of a consultant, determine how to respond to a complaint, pay particular attention to Part 1(f) and Part 4 of the Procedures for Professional Review manual. Part 1(f) describes the timelines for your response and what forms and information need to be filed. Part 4 describes the criteria for accepting or rejecting a PR request.

In your response, you are not providing all the evidence to prove your case or to challenge all of the complainant's allegations against you. You are providing information to help the Intake Committee make its decision about whether to accept the case for PR. If you believe the complaint does meet the criteria for PR, you could simply state that you are open to the PR process and request mediation to resolve the issues in dispute. If you believe that the complaint does not meet the criteria, you will need to provide information to support your stance. The criteria for PR are as follows:

- The respondent must have been an NASW member at the time of the alleged ethical breach.
- The complainant must have been directly affected or have direct information about the alleged breaches.
- The alleged breaches must relate to at least one specific section of the NASW Code of Ethics.
- The alleged breach must "rise to the level" requiring professional review.
- The alleged breach must have occurred within one year of the date that the complaint was submitted.

If, for instance, you believe that the complainant is acting solely on hearsay and has no direct evidence, you will need to make this argument. In addition to addressing the criteria for acceptance, you may state facts or evidence to counter the complainant's allegations. "I did not breach the complainant's

confidentiality, as I had the client's permission to share information with the complainant's physician." Note, however, that in a case of "complainant says" versus "respondent says," the Intake Committee will not determine whose statement is true. The case may need to go to mediation or a hearing, at which point the complainant and respondent can present their arguments and evidence (NASW, 2012).

If you are involved in other processes related to the alleged breach, explain these processes in your response. For instance, if the complainant has also issued a licensing grievance or a lawsuit, the NASW Intake Committee may postpone any PR process until the licensing grievance or lawsuit has been determined. If you believe that the matter should be handled in a different forum, then state which forum and why you believe this is a preferred forum. Consider, for instance, a grievance about a social worker acting as a family mediator. If the social worker is accredited by a family mediation body, then the worker could argue that the grievance would be better handled by this body.

When completing the response to a PR complaint, remember your professional values and ethics. Respond in a manner that is clear, concise, professional, and nonjudgmental (Barsky, 2019). Avoid slurs or disrespectful labels about the client (e.g., lazy, crazy, mean). Focus on behaviors—yours and the client's. When defending allegations in a PR process, you are allowed to disclose confidential client information on an "as needed" basis. Thus, if the client alleges that you engaged in an inappropriate dual relationship, you may explain how your relationships with the client were appropriate (e.g., although you engaged in a dual relationship, there were no other social workers in your small town to serve the client, the client consented, and you took reasonable steps to maintain appropriate boundaries). You should not disclose a client's mental health diagnosis, sexual behaviors, or other confidential information unless this information is truly needed to defend against the complaint. Both you and the client will sign a confidentiality statement as part of the initial complaint and response, so information shared within the PR process may not be disclosed to people outside the PR process. A client may not use the PR process to gather information for use in subsequent court or licensing grievance processes.

Once a client initiates a formal complaint, you will need to decide whether and how to have any further communication or interaction with the client (Barsky, 2012). In most instances, continuing to serve as the client's social worker is not good for you or the client. The client may not feel safe continuing to work with you, perhaps feeling that your anger, fear, or other reactions to the complaint may affect how you treat the client. You may also have concerns about the client's motivations and the possibility of further complaints. Under Standard 1.17 of the Code of Ethics, you should not abandon clients in need of services. Thus, if you decide to terminate work with a client because of a complaint, you or your agency should offer the client a referral to another social worker or appropriate helping professional. Making the offer in writing may be beneficial, providing documentation that you have not abandoned the client. If you decide to continue to offer services to the client, you should document the alternatives considered and why you decided it was best to continue serving the client (e.g., the client was in crisis and no other services were available).

In responding to a complaint, consider what corrective actions you may take even prior to the Intake Committee's determination about whether to accept the case for PR. If a client is alleging that you have an impairment affecting your services, for instance, consider whether you do have such an impairment (e.g., substance use or mental health problem). Also, consider what types of services may be helpful to you in addressing the problem. If a client complains that you have provided inaccurate information in a psychosocial assessment, consider whether you have provided inaccurate information and whether you can make changes that would satisfy the client and maintain your professional integrity. You may need to consult an attorney for legal advice, including questions about whether you may be admitting to

malpractice by offering to correct the psychosocial assessment (Barsky, 2012).

In some cases, a complaint may signal that you should adjust your practice with all clients to avoid future problems. For instance, if a client raises concerns about lack of informed consent, you could update your informed consent forms and processes to ensure you are fulfilling your professional obligations and serving clients more effectively.

If you have questions about the PR process, feel free to contact the NASW Office for Ethics and Professional Review for clarification. The Office cannot provide advice, but they can provide information, and as noted earlier, they can connect you with an NASW consultant. It is vital to respond to any questions from the Office within the prescribed timelines, so you do not create further problems for you and the client.

Self-Reporting

If you receive a PR request, you should also consider whether to report the complaint to your professional liability insurer and/or your licensing body (Barsky, 2019). You will need to check your insurance policy regarding what information needs to be reported and when. At the very least, when you renew your insurance, you will need to answer a question about whether you are involved in any professional complaint processes. Even if a case is dismissed, you may be required to report it. Regarding your licensing body, you will need to check state licensing laws about what information needs to be reported and when. If you know that you have breached state licensing laws, it may be in your interest to self-report rather than having to respond to a client's complaint. As noted earlier, you may consult an attorney to help you make decisions about whether, when, and how to share information about current or pending complaints.

Preparing for Mediation

If a complaint is accepted for mediation, then you may continue to work with your consultant to prepare for the mediation process (Barsky, 2017). Part of your preparation may include preparing a detailed summary of the events pertaining to the allegations, as well as any documentation or evidence supporting your defense. Note, however, that mediation is not a court-like adjudication process, but rather, a collaborative problem-solving process. Be prepared to listen to the complainant's concerns and, if possible, validate them. Validation means listening to complainants and acknowledging their beliefs, concerns, and experiences. Validation does not mean that you have to agree with the client. By validating the client, you can build trust and set the stage for resolving the conflict.

You will be asked to share your views of what happened, as well as your current interests and concerns. If you can share your information and concerns in a respectful, nonthreatening manner, this approach may facilitate mutual understanding and problem-solving. During problem-solving, the mediator may ask you and the client to brainstorm possible options for solution. Keep an open mind. Be creative. Be mindful of how you communicate, orally and through body language.

If you and the complainant reach agreement, the mediator will help you write the agreement and ensure that both of you are committed to following through. The NASW will also assign a representative to participate in the mediation process. The NASW representative's role is to ensure that the NASW's interests are considered. The NASW representative may raise questions, concerns, or options for resolution, but usually, the complainant and respondent do most of the talking.

You and the complainant may invite your consultants to be present during the mediation. Representatives may not speak during the joint mediation meeting. However, you and the complainant

may each ask to take a break in the mediation to meet individually with your consultants.

Preparing for a Hearing

If the case is referred to a hearing, the NASW will ask you and the complainant to submit a list of witnesses that each of you intend to call, as well as any documents that each of you want to submit as documentary evidence (e.g., progress notes, assessments, and correspondence). Remember that you should submit only information that is required to defend against the allegations. By limiting the documents you submit, you help maintain the client's right to confidentiality. Similarly, when considering witnesses to invite, avoid calling any witness who does not have vital information for responding to the allegations.

In preparing for the hearing, feel free to ask your consultant questions about the hearing process. The consultant may help you organize your evidence and ensure that it is presented in a thoughtful manner. The consultant may not tell you what to say and may not provide you with legal advice. The consultant may help you develop a list of questions to ask the complainant as well as any witnesses.

During the hearing, you will not ask questions directly to the complainant or witnesses. Instead, you will pose the questions to the hearing chair and the chair will decide whether and how to pose the questions to the complainant or witness. Hearings are usually conducted within a few hours. The NASW may ask you to keep the whole day open in case the hearing goes longer than expected. Once the hearing is completed, the three-person hearing panel reviews the evidence and prepares a written report (including a summary of the evidence, conclusions about whether the respondent has violated the Code of Ethics, and any corrective actions or sanctions to be imposed).

Conclusion

Hopefully, this summary provides you with a useful overview of the PR process and suggestions for how to respond. Certainly, this overview does not cover all aspects of the PR process and the types of questions that may arise in a particular case. Feel free to ask your NASW consultant and/or the NASW Office of Ethics and Professional Review for further information and support. If you require legal advice, identify an attorney who is familiar with professional social work issues, including ethics complaints, licensing grievances, and malpractice lawsuits.

In terms of basic tips for how to respond:

- Be mindful of your thoughts and feelings in response to the complaint.
- Learn about the professional review process by reviewing the procedures manual and any other instructions forwarded to you by the NASW.
- Be honest, clear, and respectful in all your communications.
- Be prepared, emotionally and strategically, for participating in any mediation or hearing processes.

One of the best ways to defend against complaints is to conduct yourself in accordance with the highest standards of professional practice. In other words, be ethical and act ethically.

References

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Recommendation

If you are interested in further readings on social work ethics, may I suggest the following handbook with chapters written by ethics scholars from around the globe:

Marson, S., & McKinney, R. (Eds.). *The Routledge handbook of social work ethics and values*. Routledge. (Conflict of Interest Disclosure: I have written a chapter on “Narrative Ethics” for this handbook. However, I do not receive any royalties for sales of this book.)

Allan Barsky, PhD, JD, MSW, is Professor of Social Work at Florida Atlantic University and author of Social Work Values and Ethics (Oxford University Press).

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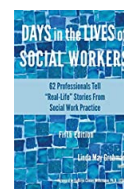
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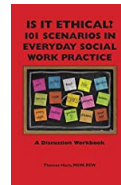


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