

Legal Assistance for Victims Deliverable Coversheet

Please include this coversheet with the deliverables you submit in JustGrants.

1) Briefly describe the purpose of the deliverables.

This webinar was designed to provide LAV/ELSI and potential grantees with information on the needs of Tribal victims who experience Domestic Violence, Sexual Assault, Dating Violence, and Stalking to advance trauma-informed, victim-centered, and culturally appropriate legal assistance service delivery to survivors on Tribal lands.

2) What project goal(s) and/or objective(s) does this deliverable support?

The PowerPoint deck is the fifth webinar deck (second in the Legal Advocacy Series) to be used in Tribal Law and Policy Institute's OVW-TLAPS Legal Advocacy Webinar Series (deliverable 3.2.C.). This presentation is entitled, "Applying for and Drafting Enforceable Tribal Protection Orders."



Protecting Client Information: Privacy, Confidentiality, and Privilege with Comments from Native Alliance Against Violence's CIRCLE Project



PRESENTED BY:

KELLY STONER

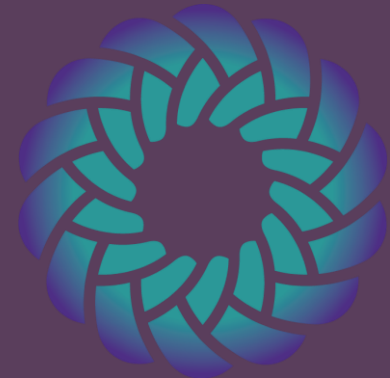
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Disclaimer

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Objectives of Presentation

As a result of the training, participants will be better able to:

1. Discuss the importance of protecting their client's information.
2. Discuss when they are required to disclose certain information.
3. Discuss what kind of statutes and protocols can help protect a client's information and guide their practice.



Knowledge Check

**Why is protecting client
information so important?**

Why is Protecting Client Information so Important?

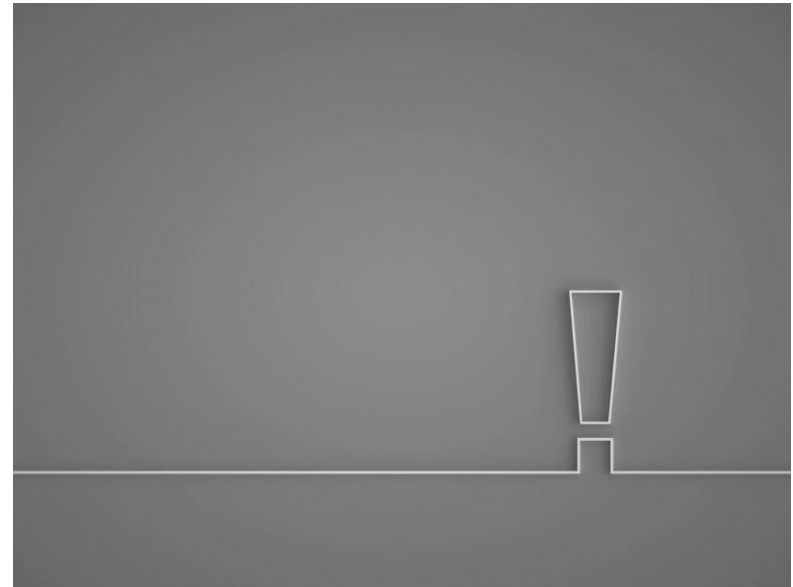
- Preserve safety strategies that rely on certain information remaining private
- Provide privacy necessary for clients to speak freely and share details essential to safety planning
- Place control of the information in the client's hands and demonstrate the advocate's commitment to client autonomy and self-determination



The Basic Rule

Most client advocate programs adhere to this basic rule:

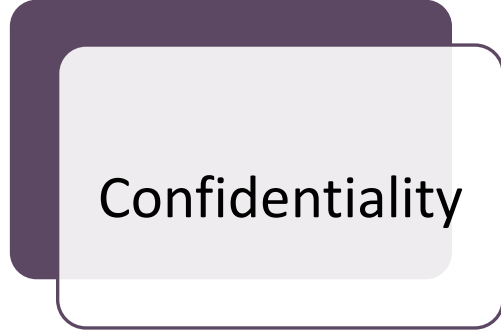
- A client's information is not shared outside the program unless the client gives the program permission to do so in writing – OR – unless demanded pursuant to a court order.



Protecting Client Information: Three Concepts

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Privacy

A graphic element consisting of a dark purple rounded rectangle behind a light gray rounded rectangle, which is itself inside a white rounded rectangle with a dark purple border.

Confidentiality

A graphic element consisting of a dark purple rounded rectangle behind a light gray rounded rectangle, which is itself inside a white rounded rectangle with a dark purple border.

Privilege



What is Privacy?

- The expectation that when a client shares information with another individual (the individual does not have to be a professional), the information will go no further without the client's consent.



What is Confidentiality?

- Protecting the confidentiality of communications is an ethical duty to keep the client's information private.
- Client statements are meant only for the service provider and the information may only be disclosed with client's consent.
- If the service provider discloses the client's information without the client's consent, the service provider may be liable for an ethical breach of duty and lose any of their licensure or certifications.



Information and Confidentiality

Types of information that are usually confidential include:

- Name/address of client requesting services
- Name/address of client receiving services
- Other private, identifying information about client (telephone number, birthdate, health issues, etc.)
- Location of client
- Domestic violence shelter location
- Any information in any form shared by the client



What is Privilege?

- An evidentiary rule that prevents the disclosure of information, even if relevant, in court.
- Particularly, privilege can come into play when the information was originally communicated in a professional or confidential relationship that is covered by law.



Privilege, continued

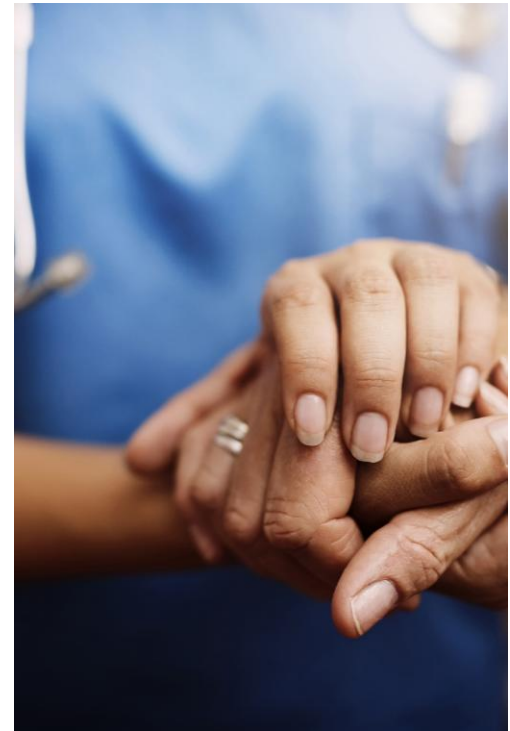
- Privileges that protect client information from disclosure are usually set out in statutes or case law in the applicable jurisdiction.
- A disclosure of the privileged information may have legal and/or criminal consequences.

Note: It is a best practice to have a Tribal code that directly sets forth that communications between the client and the advocate providing services are privileged and not subject to disclosure, absent court orders or statutory mandate.



Who is the Holder of Privilege?

- “Holder” of the privilege is the person speaking that has statutory protection regarding the statement made
 - Example: Patient in a Doctor/Patient relationship
- Only the holder of the privilege may allow the disclosure to a third party



Release of Information (ROI)

The client's permission to disclose certain client information should be executed in a written release of information form that:

- Lists what specific information you can disclose
- Identifies whom the information can be disclosed to
- Is signed by the client
- Includes an expiration date
- Provides notice that the client can rescind their permission at any time, if they choose



Professionals With Recognized Privileged Communications

Most common examples:

- Priest-Penitent
- Lawyer-Client
- Psychologist-Patient
- Doctor-Patient
- Husband-Wife
- Licensed Social Worker-Client
- Domestic Violence Advocate-Client (but **not** a client witness advocate working for the prosecutor or law enforcement)



Confidential Document
Attorney-Client Privilege



Waiving the Privilege

- Expressly: Client knowingly and voluntarily signs a Release of Information (ROI) for the client advocate to disclose specific information to the prosecutor.
- By actions of the holder: (for example)
 - providing the protected information on social media
 - having a third-party present during the communication (in the interview room)
 - putting the statement at issue, such as bringing the statement up at trial



Requirements To Disclose Information



Program Protocol

Mandatory Reporting and Court Orders

- Programs with professionals who are mandatory reporters should have written protocols to guide staff in deciding whether to report
- Programs should have written protocols to guide responses to subpoenas and/or court orders
- Typically, these decisions should be made in consultation with a supervisor



Knowledge Check: Your Program's Protocols

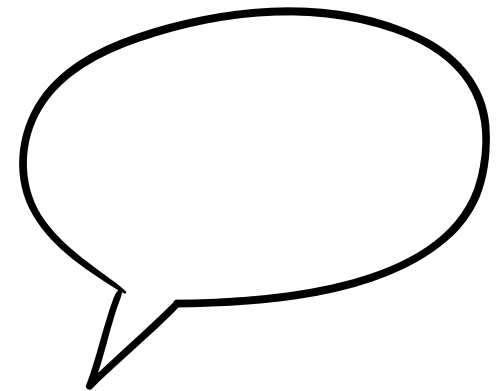
- Your agency should have a written policy about confidentiality and disclosure
- This policy should govern your daily actions and provide guidance when faced with a difficult situation like child abuse reporting or a subpoena



Knowledge Check

YOU MAKE THE CALL:

- You are an advocate in a mandatory reporter jurisdiction (no privilege defeats duty to report abuse/neglect).
- You obtain a protection order (PO) for your client. Every Saturday night client invites batterer over to her house. Batterer beats client in the presence of their 3-year-old child



Knowledge Check



- Client reports this scenario to you each Monday and notes that the ambulance and law enforcement were involved in the response
- The client continues to maintain the batterer is a good father and the client instructs that no limits on visitation should be put in place
- **WHEN MUST YOU REPORT? WILL YOU REPORT?**



Subpoenas

- Command to appear at a certain date/time to give testimony about a certain matter
- Subpoena duces tecum: commands a witness who has possession or control of some document or paper that is relevant to the issues before the court to produce the document or paper



Subpoenas: Discovery in Criminal Cases

- Based upon the right of the criminal defendant to obtain information from the prosecution and other sources to prepare a defense



Subpoenas: Discovery In Civil Cases

- Varies from jurisdiction to jurisdiction. Generally, less generous than in criminal cases because defendant's freedom is in jeopardy



Legal Protections from Discovery Motions

- Can limit the scope of discovery
- Can redact (black out) certain portions of the document
- Can limit lines of questioning for witness on the stand



Knowledge Check: Safety



Should be the paramount focus



Argue that the safety of your client is in jeopardy if the information is disclosed



Knowledge Check: Do Your Statutes Protect Confidential Information?



IF NOT, BE CAREFUL
WHAT YOU WRITE
DOWN



HAVE A WRITTEN
PROTOCOL



KEEP MINIMAL
INFORMATION IN
CLIENT FILES





THE CIRCLE PROJECT

Coordinated Indigenous Resource Center
for Legal Empowerment

MATERIALS AND PRESENTATION BY:

SHELLEY MILLER, EXECUTIVE DIRECTOR OF THE CIRCLE
PROJECT AND NATIVE ALLIANCE AGAINST VIOLENCE



Who does the CIRCLE project serve?

- Serves and supports Oklahoma Tribal Victim Advocates with advocacy support through a Victim Advocate Liaison
- Serves survivors of domestic violence, dating violence, sexual assault and stalking by providing comprehensive, high quality, culturally-competent and effective legal representation throughout Oklahoma state and tribal courts.



What is the role of the CIRCLE contract attorney?

- Provide civil legal services to the client
- Provides victim's rights legal advocacy
- Work collaboratively with the tribal victim advocate working the case
- Keep advocate/client informed of the case progress



What is the role of the Tribal victim advocate?

- To provide advocacy, safety planning, transportation, etc.
- Set up appointments between attorney and client
- Be the point of contact between the attorney and client
- Attend court with client
- Keep attorney updated
- Keep in contact with the client
- Help gather information and file as necessary



What types of Legal Representation are available through the CIRCLE Project?

- Legal representation will be provided in both state and tribal courts regarding *civil matters* arising from or caused by the violence and in related *criminal matters advocating for the enforcement of victims' rights*



What are the eligibility requirements to access the CIRCLE Project Services?

- Oklahoma Tribal Victim Advocate must make a finding that domestic violence, sexual assault or stalking has or is occurring.
- Oklahoma Tribal Victim Advocate must complete the CIRCLE PROJECT intake sheet and fax or email the sheet to CIRCLE Project Advocate Liaison Shelley Miller



Talking Points

- How long has the CIRCLE Project been in existence?
- How do tribal advocates and attorneys collaborate on case representation?
- How is working with tribal advocates beneficial?
- How is confidentiality/privilege addressed?
- What challenges have you encountered pairing tribal advocates with attorneys?
- What are the ways you have reached a compromise?



Questions?

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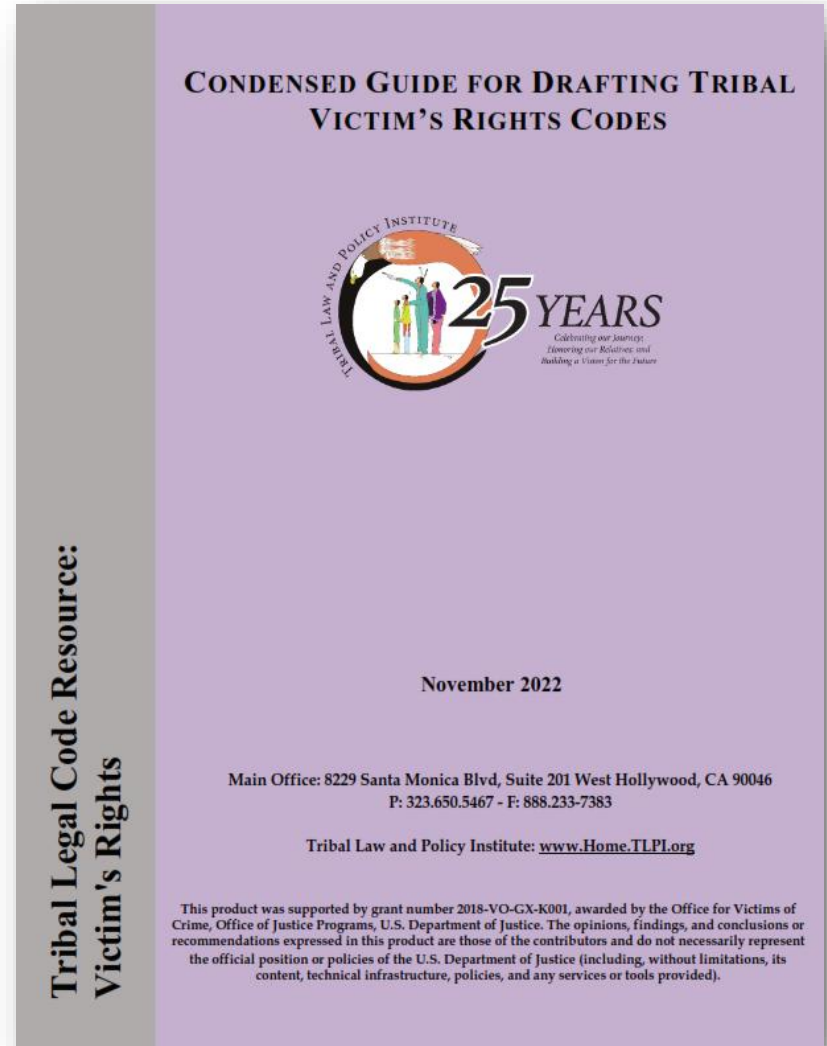


Thank you!



Tribal Legal Code Resource: Victim's Rights, Condensed Guide For Drafting Tribal Victim's Rights Codes

[*Tribal Legal Code Resource: Victim's Rights, Condensed Guide for Drafting Tribal Victim's Rights Codes*](#) is designed to assist tribal governments with the development of victim right's codes. This resource was written with the belief that tribal governments have the ability to draft victim right's laws centered on their tribal beliefs that convey compassion for those harmed by crime and the importance of protecting the rights of victims, and to prevent revictimization.



Pocket Guide: Tribal Victim Advocacy in Criminal Cases

[Pocket Guide: Tribal Victim Advocacy in Criminal Cases](#) is designed particularly for community-based advocates as a quick reference guide to better assist victims as they navigate the criminal legal process. This Pocket Guide contains things such as a quick review of the general criminal legal process and victim rights with an emphasis on safety planning at every juncture. While this Pocket Guide is designed primarily for community-based advocates, it may be useful for other professionals who work with victims.



**Pocket Guide:
Tribal Victim Advocacy in Criminal Cases**

POCKET GUIDE: TRIBAL VICTIM ADVOCACY IN CRIMINAL CASES



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