

WICSEC 2015

FORT WORTH
CITY OF COWBOYS AND CULTURE

Shaping the Future for Children

Ethics

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wicsec
western interstate CHILD SUPPORT enforcement council
Dalworthington

Ethics

- **Mind Control**
- Mind control (also known as brainwashing, reeducation, coercive persuasion, thought control, or thought reform) is a theoretical indoctrination process which results in "an impairment of autonomy, an inability to think independently, and a disruption of beliefs and affiliations."

Mind Control



Mind Control

- I am going to give you a word
- I want you to write down three things about this word
- I want one description to identify this word or object (size, space, utility, etc.)
- I want one description to identify how you feel about this word or object (love, hate)
- I want one description to identify how you use this work or object

Apple

- The word is Apple



Apple

- 1. Description:
- 2. Feelings:
- 3. Use or utilization:

Mind Control

- I am going to give you another word
- I want you to write down three things about this word
- I want one description to identify this word or object (size, space, utility, etc.)
- I want one description to identify how you feel about this word or object (love, hate)
- I want one description to identify how you use this work or object

Apple

- The word is Apple



Apple

- 1. Description:
- 2. Feelings:
- 3. Use or utilization:

Mind Control

- Where your answers to the questions different?
- Did the perspective change your point of view?
- Does negotiation of a case change based upon the frame of reference?

Manipulation

- Is it Ethical to manipulate someone?
- Does the setting change the reference point?
- Can language or image change the dynamic of the situation
- Negotiation in the office or phone vs. negotiation in court
- Can this be Unethical?

Other Ethical Quandaries

- Child Support Specific issues related to Guideline Calculations
- GIGO (garbage in-garbage out)
- What are the real numbers?
- Two Guideline Calculations-Mom's and Dad's
- Show Mom's to Dad and vice-versa and negotiate in the middle

Ethical?

- Is that Unethical?

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

Here is a test

- Write down a two digit number from 01 to 99.
- If that number was a \$ amount-would it be a reasonable amount to pay for a beverage?
- Would it be a reasonable amount to pay for a meal?
- Would it be a reasonable amount to pay for a special occasion celebration meal?

Test Results

- Anchoring
- Those who started with a higher number, ended with a higher number-for all questions
- We fixate on the first number we get

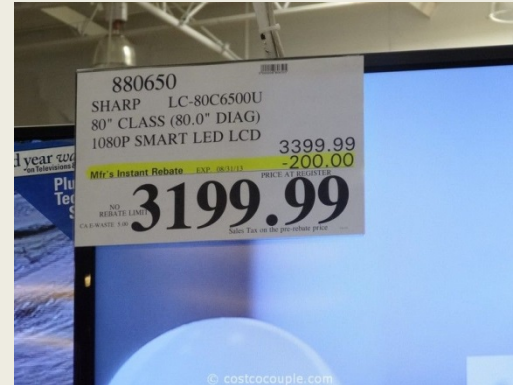
Anchoring

- <https://youtu.be/4EUP4BldPig>

Anchoring



Anchoring



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WICSEC 2015 - Shaping the Future for Children

Anchoring

- Showing a high G/L Calculation, makes the lower one look reasonable
- Showing a low G/L Calculation makes the higher one look better
- It is unethical?

Anchoring

Rule 2.1 Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Scenario #1

- Tell me more!

Scenario #1

You have been assigned with another attorney in your agency to interview candidates for newly open attorney vacancies.

Unlike others who are right out of law school, one of the promising candidates is an attorney with some years in civil and family law practice.

After completing all the mandatory questions, you ask the attorney to identify some of his former clients, some of whom are known to you, and to describe the issues in their cases and his approach to handling them.

Scenario #1

Is it appropriate for you to ask questions about the candidate's former clients and their issues?

Is it be appropriate for the candidate to answer your questions?

Would it make a difference if you told the candidate that his answers will be held in confidence?

Would it make a difference if you were interested in determining if there were any conflicts of interest involving the candidate's former practice and your agency?

Scenario #1

ABA Model Rule 1.6

Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to. . . (o) by a court order.

Scenario #2

- To tell the truth...or not?

Scenario #2

- You are in court awaiting the appearance of opposing counsel and his client, the non-custodial parent in your case. The matter on calendar is for a modification of support brought by your agency on behalf of three minor children.
- The custodial parent has told you that the NCP is self employed as a financial advisor and is very successful. Although you have no direct evidence of his current income, you have confirmed that the NCP owns a large home in a luxury neighborhood, as well as two very expensive cars.

Scenario #2

- The case has been continued twice from the original hearing date because the NCP failed to produce business records which you had subpoenaed. You are intent on closely examining the defendant about his income and expenses in order to substantiate an increase in support.
- At the last date, the court ordered the defendant to return for today's hearing "without further order, notice, or subpoena."
- When the case is called, NCP's counsel is present, but he his not.

Scenario #2

- Unknown to anyone except NCP's counsel, a federal grand jury has issued a sealed indictment charging the NCP with multiple counts of tax fraud, perjury, and conversion of assets. Arrangements for his surrender on the charges are pending.
- NCP's current spouse called NCP's counsel the night before to inform him that the NCP left the house hurriedly after browsing the internet and packing a bag.
- With passport in hand, she said he told her, "They're wise to me. My goose is cooked. I've gotta go—I'll call you when I know I am where I'll be safe."

Scenario #2

- You are highly displeased that the NCP has failed to show or to produce the records you've subpoenaed. You view this as a delaying tactic and an attempt by him to avoid an increase in his obligation and you say as much to the court.
- Displaying obvious displeasure, the court asks NCP's counsel if he has any idea why his client is not in court.
- When NCP's counsel hesitates answering, the court states, "Counsel, if you know something and refuse to tell me, I'll hold you in contempt."

Scenario #2

- May counsel answer the court's question?
- What is the rationale for your answer?

Scenario #2

ABA Model Rule 3.3

Candor Toward the Tribunal

- (a)(1) A lawyer shall not knowingly make a false statement of fact or law to a tribunal. . .
- (c). . . even if compliance [with this rule] requires disclosure of information protected by Rule 1.6 (Confidentiality). . .

Scenario 3

You Talkin' to Me?

facebook

Email

fbadmin@nosuch.gov

☐ Keep me logged in

Password

[Forgot your password?](#)

CP Cheryl: Why isn't Billy paying his child support!? What can your office do to get him to pay?



DCSS Caseworker Carl: We do not have any verified income for Billy at this time. I am going to contact Billy & review your case for the next enforcement action.



NCP Nelson: I cannot afford my child support....what should I do???



DCSS Attorney Alice: Contact our office as soon as possible and request a Review and Adjustment.





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Nosuch County Department of Child Support Services

Eager to bring his agency into step with the times, Nonesuch County Child Support Director A.O. Eller has announced the launch of a new means for current and potential case participants, as well as employers, members of the local bar, and other interested third parties to communicate with his agency.



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Nosuch County Department of Child Support Services

Not satisfied with providing information and answers via traditional means such as in-person interviews or via the agency’s call center, Eller has directed that his department will be among the first to offer the opportunity for two–way interaction through a live internet chat room, called “Case Chat, ” accessible via the agency’s public website.



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Write something...



Nosuch County Department of Child Support Services

Members of the NSCDCSS “legal staff” will be available during business hours to answer questions about cases and provide guidance to those needing assistance with the establishment or enforcement of their cases or in dealing with the myriad problems that may arise in the life of a child support case.



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Question

Write something...



Nosuch County Department of Child Support Services

“Case Chat” has been a huge success! Child support agency attorneys staff the operation, providing both general information and case specific advice to all those who “enter.”

Talkin'

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- However.. Problems arise
- As demand for the service grows, it quickly outstrips the ability of the agency's lawyers to continue conducting live chats and still prepare cases, draft motions, and make court appearances.
- This leads to:



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Write something...



Nosuch County Department of Child Support Services

Due to the overwhelming positive response to the new service, NSCDCSS Director AO Eller has directed that paralegals and experienced caseworkers will also staff the “Case Chat” to deal with the incoming volume of questions and requests for advice.

Talkin'

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- Questions:
- Are there ethical pitfalls are apparent in this scenario? What are they?
- Is a live chat room service “a bridge too far” in providing information and assistance to the public?
- If only attorneys staffed the chat room, would that cure any problems?
- What issues exist in allowing trained paralegals and experienced caseworkers to staff the chat room? How could they be addressed?

Talkin'

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- Here's a link to a North Carolina Bar Association opinion that might shed light on this issue:

<http://www.ncbar.gov/ethics/ethics.asp?page=2&from=7/2011&to=8/2011>

PCRPC 7.3 Direct Contact with Prospective Clients

- (a) A lawyer shall not by in person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for doing so is the lawyer's pecuniary gain, unless the communication is protected from abridgment by the Constitution of the United States or by the Constitution of the State of California, or unless the person contacted:
 - (1) is a lawyer; or
 - (2) has a family, close personal, or prior professional relationship with the lawyer.

□ **PCRPC 1.18 Duties to Prospective Client**

- (a) A person who, directly or through an authorized representative, consults a lawyer for the purpose of retaining the lawyer or securing legal service or advice from the lawyer in the lawyer's professional capacity, is a prospective client.
- (b) Even when no lawyer-client relationship ensues, a lawyer who has communicated with a prospective client shall not use or reveal confidential information learned as a result of the consultation, except as Rule 1.9 would permit with respect to information of a former client.

□ **PCRPC 1.9 Duties to Former Clients**

- (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed written consent.

- **CRPC -Rule 3-110 Failing to Act Competently**
- (A) A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.
- The duties set forth in rule 3-110 include the duty to supervise the work of subordinate attorney and non-attorney employees or agents. [comment]

- **Rule 5.3 Responsibilities Regarding**
- **Nonlawyer Assistants**
- With respect to a nonlawyer employed or retained by or associated with a lawyer: (a) a partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer;

Talkin'

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- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

- PRCPC 5.3 Comment [2]
- [2] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with these Rules and the State Bar Act. See Comment [2] to Rule 5.1. Paragraph (a) applies to lawyers with managerial authority in corporate and government legal departments and legal service organizations as well as to partners and other managing lawyers in private law firms. The measures employed in instructing and supervising nonlawyers should take account of the fact that they may not have legal training.

- **PRCRPC 4.3 Dealing with Unrepresented Person**
- (a) 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 incorrectly believes the lawyer is disinterested in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. If the lawyer knows or reasonably should know that the interests of an unrepresented person are in conflict with the interests of the client, the lawyer shall not give legal advice to that person, except that the lawyer may, but is not required to, advise the person to secure counsel.

Scenario 5

Different Interests

Different Interests (Video)

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The Scene: the Child Support Courtroom in Nonesuch County.

Bailiff[or Clerk]: All Rise Superior Court of Nonesuch County, the Honorable Rip Imhoff presiding.

Judge: Please be seated.

First case on calendar this morning id Case 4D8686 *In Re the Marriage of Sharon Good and Thomas Plenty...* are the parties present?

Ian: Good morning Your Honor, Ian Erdowell appearing for and with Mr. Plenty.

Jacques: Good day your Honor. Jacques Sansclue for the Nonesuch County Department of Child Support Services.

Different Interests

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Sharon: Hello Your Honor, Sharon Good appearing for her self.

Judge: Good Morning all. Mr. Sansclue, this is your first day in this courtroom, welcome!

Jacques: Thank You.

Judge: As a preliminary matter, I've reviewed the pleadings in this case and see that there are interstate issues regarding continuing exclusive jurisdiction and I'd like to stream line the issues to maximize our court time. May I see counsel in my chambers for a brief meeting?

Different Interests

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Sharon: I would like to attend, too, Your Honor.

Judge: Why? It's true that Mr. Sansclue does not represent you, but he is there to protect your interests.

Sharon: But Your Honor, I've spoken to Mr. Sansclue about my case. He agrees with Thomas and his attorney that the issuing court did not have jurisdiction to make a support order. I've done research and talked to attorneys and I think they are both wrong. Thomas and I both signed a consent to have the other state have jurisdiction for our case. We filed copies both here and...

Different Interests

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Judge: Why? It's true that Mr. Sansclue does not represent you, but he is there to protect your interests.

Sharon: But Your Honor, I've spoken to Mr. Sansclue about my case. He agrees with Thomas and his attorney that the issuing court did not have jurisdiction to make a support order. I've done research and talked to attorneys and I think they are both wrong. Thomas and I both signed a consent to have the other state have jurisdiction for our case. We filed copies both here and...

Different Interests

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Judge: ... [Cuts her off] You are certainly entitled to your opinion, Ma'am, but you may be well served to defer to professionals in this matter. Thank You! Counsel, in my chambers!

[Judge, Ian and Jacques leave the courtroom.]

Graphic ... "25 minutes later"

Judge: Counsel, Mr. Good, Ms. Plenty... While in Chambers, Mr. Erdowell produced evidence showing that the other state lacked jurisdiction to issue a support order.

Different Interests

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Sharon: I don't know that I've seen that evidence!

Jacques: She has, your Honor.

Judge: Ms. Plenty, please! In light of the evidence, which I am now admitting over your apparent objection, I have no choice but to determine that the other state lacked Continuing Exclusive Jurisdiction to issue and order.

If you are unhappy with the ruling, you are free to appeal it, Ms. Plenty.

Different Interests

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- A wrinkle—Suppose Jacque's Supervisor is aware that Judge Imhoff likes to engage in the ex parte discussions and that he's been reversed on the issue which then requires more work for the attorneys and legal staff/ Does (s)he have a duty to tell him?

Different Interests

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- **Rule 5-300 Contact With Officials**
- (B) A member shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before such judge or judicial officer, except:
 - (1) In open court; or
 - (2) With the consent of all other counsel in such matter; or
 - (3) In the presence of all other counsel in such matter; or
 - (4) In writing with a copy thereof furnished to such other counsel; or
 - (5) In ex parte matters.

Different Interests

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- **CRPC Proposed ABA 3.5**
- (b) Unless authorized to do so by law, the Code of Judicial Ethics, a ruling of a tribunal, or a court order, a lawyer shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before the judge or judicial officer, except:

Different Interests

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- ❑ **CRPC Proposed ABA 3.5 (Con't)**
- ❑ (1) in open court;
- ❑ (2) with the consent of all other counsel in the matter;
- ❑ (3) in the presence of all other counsel in the matter;
- ❑ (4) in writing with a copy thereof furnished promptly to all other counsel; or
- ❑ (5) in ex parte matters as permitted by law.

Different Interests

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- **Family Code §17406**
- ...the local child support agency and the Attorney General represent the public interest in establishing, modifying, and enforcing support obligations. No attorney-client relationship shall be deemed to have been created between the local child support agency or Attorney General and any person by virtue of the action of the local child support agency or the Attorney General in carrying out these statutory duties.

Different Interests

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- **Current Rule 3-110 - Failing to Act Competently**
- (A) A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.
- ***Discussion:***
- The duties set forth in rule 3-110 include the duty to supervise the work of subordinate attorney and non-attorney employees or agents.

Different Interests

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- **Proposed CRPC ABA Rule 1.1-- Competence**
- (a) A lawyer shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.
- (b) For purposes of this Rule, “competence” in any legal service shall mean to apply the
 - 1) diligence,
 - 2) learning and skill, and
 - 3) mental, emotional, and physical ability reasonably necessary for the performance of such service.

Different Interests

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- **Proposed Rule 5.2 Responsibilities of a Subordinate Lawyer**
- (a) A lawyer shall comply with these Rules and the State Bar Act notwithstanding that the lawyer acts at the direction of another lawyer or other person.
- (b) A subordinate lawyer does not violate these Rules or the State Bar Act if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Different Interests

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□ **Comment**

- [2] When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to the lawyers' responsibilities under these Rules or the State Bar Act and the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it.

Scenario 7

I've Got a Secret

DCSS Attorney Anita: Hey Craig, can you please pull a credit report on this NCP....I need to verify her address for personal service.



DCSS Caseworker Craig: Are you sure you don't want me to just send a postal verification request instead?



DCSS Attorney Anita: No, I want you to pull her credit report.



NCP Nancy: Child Support pulled my credit report!?! What! I am filing a complaint.



I've Got a Secret

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- Anita Noe is a lawyer with the Nosuch County Child Support Enforcement agency. She handles most of the agency's enforcement actions and litigation. In the course of her collections effort, she makes use of the agency access to credit reporting services. The agency's use of the credit reporting information is limited to the permissible purposes provided in the Fair Credit Reporting Act, [15 USC § 1681 et seq. (FCRA)].

I've Got a Secret

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- Recently, Anita was handling a contempt action for non payment of support brought on behalf of a custodial parent, the former husband of the respondent non-custodial parent. At the same time, Anita was also responsible for responding to the OSC for modification brought by the CPs' ex-wife in hopes of lowering the child support order. The Nosuch County child support automation system listed multiple addresses for the ex-wife accumulated over the duration of the agency's responsibility for handling the case.

I've Got a Secret

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- Anita needed to verify the ex-wife's current address in order to ensure personal service of the OSC re contempt. To do so, she directed a caseworker to obtain “credit report information” for the ex-wife. The caseworker ultimately obtained and shared with Anita a credit report which provided not only address information but also information about the ex-wife’s credit accounts, account numbers and account status.

I've Got a Secret

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- Address verification is not a permissible purpose for obtaining such a report under § 1681b of the FCRA, and Anita had no entitlement to the full file credit information on the ex-wife. In addition, the caseworker had requested and obtained the report in circumstances where it was illegal for the credit agency to furnish the information under the FCRA.

I've Got a Secret

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- Anita “drop filed” the copy of the collection report and, with the exception of the address information for the ex-wife, did not use other information from the report in either the contempt or modification proceedings when, ultimately, she litigated the issues before the court.
- The ex-wife subsequently learned of Anita’s inquiry when she obtained a copy of her own credit report. Angry and upset, she filed an ethics complaint against both Anita and the Nosuch County child support enforcement agency with the state bar.

I've Got a Secret

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- Questions:
- What ethical duties, if any, come into play in this scenario?
- What responsibility does Anita have, if any, for the chain of events? What could/should she have done differently in directing efforts to locate an address for the ex-wife? Does the agency or its managers bear any responsibility in this scenario?
- What were Anita's responsibilities and/or duties upon receiving the improperly obtained credit information? What steps could/should she have taken?

I've Got a Secret

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□ 15 USC § 1681B - PERMISSIBLE PURPOSES OF CONSUMER REPORTS (HANDOUT)

I've Got a Secret

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Competence

CPRC 3-110

PCRPC 1.10

See comment [6]: This Rule does not apply to a single act of negligent conduct or a single mistake in a particular matter.

QUESTIONS?
Thank You!



Who ya' gonna call?

Who ya' gonna call?

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□ State Bar Ethics Hotline

- The Ethics Hotline, a confidential research service for attorneys only, helps lawyers identify and analyze their professional responsibilities. Although staff members cannot provide legal counsel, advice or opinions, they can discuss issues and authorities with lawyers. By referring callers to statutes, rules, cases, and bar opinions, staff members strive to assist attorneys in reaching informed decisions about their professional responsibility questions.

**Attorneys may call the Ethics Hotline from 9:00
a.m. – 5:00 p.m. weekdays (800) 238-
4427. (800) 2-ETHICS.**

Jennifer Coultas
Tex Ritter

Thank You!

- **Jennifer Coultas**
 - Assistant Division Chief
 - County of Los Angeles Child Support Services Dept.
 - Jennifer_Coultas@cssd.lacounty.gov
- **Tex Ritter**
 - Director
 - Sierra Nevada Regional Dept. of Child Support Services
 - Tex.Ritter@co.Nevada.CA.US