

ADVISORY ETHICS OPINION 1998-01

SYNOPSIS:

A lawyer may represent a spouse in a divorce proceeding and that spouse's parents in a guardianship proceeding in which they seek guardianship of their grandchild so long as the lawyer can adequately represent the interests of both the spouse and the grandparents and they consent to the representation after full disclosure.

FACTS:

The requesting attorney represents the husband/father in his divorce action. The husband/father's parents paid the attorney's retainer. In the divorce proceeding, the paternal grandparents were awarded temporary custody of the minor child as advocated by the father.

The paternal grandparents subsequently filed a pro se guardianship petition in probate court, and requested that the attorney represent them in the guardianship proceeding. The father's position from the outset has been that the minor child should be in his parents' custody and guardianship. After meeting separately and jointly with the father and the grandparents, explaining the potential conflict of interest, the attorney agreed to represent the grandparents in the guardianship proceeding.

Wife's attorney in the divorce action has filed a motion to disqualify the requesting attorney as counsel because of an alleged conflict of interest.

QUESTION:

The requesting attorney seeks the opinion of this Committee as to whether the attorney may continue to represent the father and the grandparents in these circumstances.

DISCUSSION:

The pertinent Disciplinary Rule relating to this inquiry is DR 5-105. It reads as follows:

DR 5-105 Refusing to Accept Or Continue Employment If The Interests Of Another Client May Impair The Independent Professional Judgment Of The Lawyer.

- (A) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve him in representing differing interests, except to the extent permitted under DR 5-105 (C).
- (B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, or if it would be likely to involve him in representing differing interests, except to the extent permitted under DR 5-105 (C).
- (C) In situations covered by DR 5-105 (A) and (B), a lawyer may represent multiple clients if he can adequately represent the interests of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

On the facts stated, the attorney fully discussed with the father and the grandparents, both separately and jointly, the potential conflict of interest in representing both simultaneously. This is the procedure contemplated by EC 5-16 and EC 5-1. The father and the grandparents have consented to the attorney's representation of both. Accordingly, the requirements of DR 5-105 (c) have been met. The lawyer, therefore, may continue to represent the father in the divorce action and the grandparents in the guardianship proceedings. If, however, a dispute arises between the parties, the lawyer must withdraw.¹

Also of potential concern is DR 5-107 (B), which requires that a lawyer "shall not permit a person who . . . pays him to render legal services to another to direct or regulate his [or her] professional judgment in rendering such legal services." The attorney should not allow the financial arrangements with the grandparents to adversely affect the representation of the father of the child in either proceeding.

¹ See, e.g., Rhode Island Opinion No. 93-65 (9/14/93) (a lawyer who represents a parent in a dependency/neglect case may also represent the children's grandparents in seeking custody of the children so long as the lawyer believes representing the grandparents will not adversely affect the relationship with the parent and both parties consent upon consultation; however, if a dispute arises between the parties, the lawyer must withdraw) (decided under Rule 1.7 of the Rhode Island Rules of Professional Conduct, similar to DR 5-105 (C)); see also Pennsylvania Opinion No. 97-42 (4/10/97) (representation of mother and son); and EC 5-15.

CONCLUSION:

The lawyer's representation of the multiple parties, father and grandparents, is permissible so long as the requirements of DR 5-105 (C) are met – that is, the lawyer fully discloses the effect of such multiple representation on the exercise of his independent professional judgment on behalf of each client, and each client consents to the multiple representation.