E-83-18 Conflict of interest: Assistant district attorney representing husband in child support action after representing wife

Question

An assistant district attorney is designated by the county board as attorney for the county's child support program. As such the assistant district attorney has represented Miss Y as an AFDC recipient in two paternity actions against Mr. X. The parties stipulated that each will have custody of one child and Mr. X will pay child support. Miss Y obtains employment and terminates AFDC, while Mr. X loses his job and becomes an AFDC recipient. Under federal and state law, the district attorney's office must now pursue collection of child support from Miss Y. Is it ethical to proceed against Miss Y?

Opinion

Before responding to the specific question presented, the Professional Ethics Committee takes note of the assistant district attorney's simultaneous representation of the state and Miss Y in the paternity actions and offers these comments. In earlier opinions, this committee has held that a district attorney represents the county and state at all times. *See* State Bar Formal Opinion E-79-8 (February 1980), Memo Opinion 6/70 (June 1979). As such, the district attorney's primary loyalty is to the state. SCR 20.34(2)(j). Although the representation of multiple clients in paternity actions, the state and mother, is not necessarily improper, it should be undertaken only after the implications of the dual representation have been fully explained to the mother and she consents to such representation. SCR 20.23(3)(c). For the purposes of this opinion, the committee assumes such consent has been obtained.

Supreme Court Rule 20.21(1) requires a lawyer to preserve the confidences and secrets of his or her client. Moreover, an attorney cannot use a confidence or secret of his or her client to the disadvantage of the client. SCR 20.22(1)(b). Finally, SCR 20.28(4) provides that if a lawyer is required to decline or withdraw from employment the partners and associates of the lawyer are also precluded from accepting or continuing the employment.

In the situation set forth, it is clear that the assistant district attorney is prohibited from pursuing a child support action against Miss Y in light of the earlier representation of Miss Y against Mr. X. Since the assistant district attorney is precluded from the representation, the other members of your office are also precluded from undertaking the representation.