
**E-83-21 Conflict of interest: Attorney
representing parents in custody hearing
while simultaneously representing father
in criminal case**

Facts

An attorney represented a wife and husband in a proceeding concerning whether or not the wife's minor daughter was in need of protective custody or placement in a foster home. The husband is a stepparent with no custodial rights. Both the mother and the stepfather agreed that placement in a foster home was in the daughter's best interest. A charge was made that the stepfather sexually abused the child. The stepfather denied the charge, but pleaded no contest to the charge at the final disposition.

Question

What is the propriety of the attorney defending the stepfather should criminal charges be brought against him? No criminal charges will be brought against the mother. The attorney stated that in his/her opinion no confidential information was obtained at the placement proceeding since any information obtained at the proceeding would be part of a criminal complaint.

Opinion

Reviewing the situation set forth, the Professional Ethics Committee fails to see any conflict of interest which would prohibit the attorney from representing the stepfather against any criminal charges related to the matters revealed at the placement proceeding. In providing this answer the committee assumes the proceeding referred to was brought under Chapter 48, Stats. More specifically, the committee assumes the proceeding resulted from a sec. 48.25 petition signed by the child pursuant to sec. 48.13, and that the proceeding was closed, as provided by sec. 48.299. Finally, the committee assumes that any information revealed at the proceeding would be discoverable in a subsequent criminal action. *See sec. 48.35.*

The committee wishes to remind the attorney that the Code of Professional Responsibility, codified in Chapter 20 of the Wisconsin Supreme Court Rules, prohibits an attorney from using information acquired in the course of the representation of a client to the disadvantage of the client. *See* SCR 20.21(5), 20.22(1)(b). Accordingly, should the mother be called as an adverse witness in any criminal action against the stepfather, the attorney would be prohibited from using past confidences to impeach her.