
**E-86-11 IV-D directors' representation of
custodial parents in post-divorce
support proceedings: Conflicts and
disqualification**

Facts

An attorney serves as the IV-D (Child Support Agency) director for a county. Federal law apparently requires IV-D directors to represent the custodial parent in proceedings relating to post-divorce support issues, regardless of the custodial parent's financial status. Whereas such attorneys represented the interests of the state and county prior to enactment of this federal law, they now, apparently, directly represent the custodial parent's interests.

Various factual scenarios may arise in which an attorney in this position ostensibly might be required by this federal law to represent a custodial parent in a support proceeding, having previously represented the opposing party in a support proceeding or now being simultaneously involved in representing the spouse of a subsequent marriage and an ex-spouse.

Question

1. Under these facts, may an attorney ethically accept representation of a custodial parent in a support proceeding if: (a) the attorney either previously represented the other party on substantially the same issues; or (b) if the attorney simultaneously represents the spouse of a new marriage against a former spouse and the spouse of a prior marriage in support proceedings?

2. What action should an attorney take if the issues of prior or simultaneous representation under Question 1 are not reasonably apparent prior to commencing representation of a custodial parent?

Opinion

1. The answer to Question (1)(a) is "no."

Representation against a former client in a matter substantially related to the facts or objectives of the prior representation is prohibited professional conduct. *See, e.g.*, State Bar Committee on Professional Ethics Formal Opinion E-85-8, 58 Wis. Bar Bull. 69 (Oct. 1985). This rule has been applied to domestic relations representation in Wisconsin. *See, e.g.*, *Disciplinary Proceedings Against Keyes*, 112 Wis. 2d 297, 332 N.W.2d 813 (1983); and *Disciplinary Proceedings Against Conway*, 100 Wis. 2d 311, 301 N.W.2d 253 (1981).

The answer to Question (1)(b) is “yes, but. . . .”

Under these facts, the parties to the two proceedings are different, albeit there exists a marital relationship between a party to each proceeding. Assuming no confidential information is obtained from the spouse of the current marriage which could be used in the representation against that person’s spouse, there does not appear to be a bar to such simultaneous representation. *See, e.g.*, Opinion E-85-8, *supra*.

Nevertheless, “[r]egardless of the belief of a lawyer that he or she may properly represent multiple clients, he or she must defer to a client who holds the contrary belief and withdraw from representation of that client.” SCR 20.23(3)(f). Therefore, good practice would be to seek the informed consent of those parties with standing to object, prior to accepting the second matter. *See, e.g.*, SCR 20.28(3) and ABA *Model Rules of Professional Conduct*, Rule 1.7.

2. If the issues of prior or simultaneous representation are not reasonably apparent prior to commencing the representation in question and if, in the case of simultaneous representation, informed client consent cannot be appropriately requested or cannot be obtained, the attorney should seek permission of the court to withdraw and for independent counsel to be appointed. *See* SCR 11.02(3), 20.16(2)(b) and (d) and (3)(b) and (e).