

CONFLICTS – AGAIN

by

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One of the most fertile areas for complaints against lawyers, and an area in which lawyers can easily make missteps, is the area of conflicts of interest. Vigilance is required to ensure a lawyer does not undertake to represent persons with conflicting interests. An example based on a matter before the Office of Lawyers Professional Responsibility illustrates the point.

A girl (a minor) became pregnant. After her child was born, the father of the girl arranged a meeting with the lawyer. The purpose of the meeting was to discuss the desire of the girl that her father and mother take care of the girl's child for a period of time while the girl finished high school and furthered her education to be better able to take care of her child.

When the girl's father contacted the lawyer, he informed the lawyer that he sought consultation regarding custody issues relating to the girl and her child.

The girl, her father and mother met with the lawyer. At this time, the girl was still a minor. During this meeting, the issue of who would take care of the girl's child was presented to the lawyer. The lawyer described to the girl, her father and mother the process for changing custody. The lawyer outlined and briefly summarized options available.

There were two such meetings. By his actions, the lawyer undertook representation of the girl, her father and her mother. The interests of the girl, and those of her father and mother, however, were in conflict.

The lawyer thereafter, as counsel for the girl's father and mother only, drafted a custody consent decree. When the girl signed the document, she was an adult. The custody consent decree contained no provision for the girl to have visitation with her child.

The girl subsequently moved to have the custody consent decree vacated. During the hearing on that request, the lawyer testified that when he first met with the girl, her father and mother, it was not clear who the lawyer's clients would be. The lawyer also testified that after hearing from the girl and her father during that meeting the lawyer immediately identified that there was an inherent conflict of interest in these circumstances. In his testimony the lawyer acknowledged that during both meetings the lawyer summarized options available under the law.

Even without the formality of a retainer agreement or payment of a fee, an attorney-client relationship may be formed when a person talks to a lawyer seeking legal advice and the lawyer provides legal advice where it is reasonably foreseeable that the person will rely on that advice. *Togstad v. Veseley, Otto, Miller & Keefe*, 291 N.W.2d 686, 692-93 (Minn. 1980). That is precisely what happened here. The girl went with her father to a meeting with a lawyer. The purpose of the meeting was to obtain legal advice about change of custody of the girl's child to the girl's father and mother. The lawyer provided legal advice to the girl. It was foreseeable that the girl would rely on what the lawyer said, especially given her age and that her father brought her to meet with a lawyer.

The lawyer's representation of the girl's father and mother despite his representation of the girl created a conflict of interest. Rule 1.7(a)(1) and (2), Minnesota Rules of Professional Conduct, provides:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

The girl's interests conflicted with her father and mother's. The girl was transferring custody of her child. She was giving up rights as a parent. This is one of the most fundamental and important decisions a person can make. When the girl met with the lawyer about this, she was a minor. The lawyer represented the girl's father and mother in obtaining rights which belonged to the girl, without even providing for any visitation. This was directly adverse to the girl's interests. Clearly, the lawyer's duties and loyalties to the girl's father and mother, who were his clients and paid his bill, materially limited his ability to advise and represent the girl.

The lawyer acknowledged that he promptly recognized there was a conflict, but continued with representation. When a conflict appears, analysis under the rules is required, and withdrawal from the representation of one or more clients may well be required.