

So You've Got A Conflict? How To Avoid Withdrawing

by

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Imagine that you're interviewing a new client on a potential paternity case. You've been talking with the person for about an hour and have obtained quite a bit of confidential information or confidences and secrets as defined by the rules. When you finally get around to asking the name of the potentially adverse party, you realize, to your dismay, that your "new client's" case is already on your case list. In fact, you already represent the adverse party, whose interests are directly at odds with the goals you and your "new client" have just discussed in detail. You've developed a conflict of interest.

In a recently issued admonition, a lawyer was faced with a similar problem.

Case in point

The lawyer had a pre-existing attorney-client relationship with the mother and grandmother of a child fathered by complainant's son. The lawyer previously agreed to represent them in a paternity action if one were brought. The lawyer then met with the complainant as a part of a referral service. Complainant sought legal advice to determine what, if any, legal rights she had with respect to the child fathered by her son.

Complainant's son had not filed a paternity action and was not named as the child's father on the birth certificate. At the time complainant sought legal advice, complainant enjoyed an amicable relationship with the birth mother and the maternal grandmother.

The lawyer met with complainant and took notes. When complainant disclosed the name of the potentially adverse party, the lawyer stopped taking notes and stated she could not represent complainant.

The lawyer did not disclose that she had already agreed to represent the potentially adverse party in the event of a paternity action. The lawyer then spent about a half-hour going through the basic steps of a paternity action for complainant.

Next, the lawyer contacted her "original clients" and informed them that she would not be able to represent them in a paternity action. Sounds like she did the proper thing, right? Yes, but, when she was withdrawing, the lawyer disclosed the fact that she had met with complainant to discuss paternity and grandparent rights issues. As a result of the lawyer's disclosure, complainant's relationship with the mother of the child and the maternal grandmother is no longer amicable and complainant has been unable to visit her grandson.

What does it mean to you?

There are a few things to take away from this example. (Not the least of which is that it is far better to screen your cases sooner rather than later for possible conflicts of interest.) It is plain that where a lawyer unknowingly consults with an adverse party, the lawyer has an obligation to decline the representation of

both the "original" and the "new clients." In doing so, the lawyer must be wary of disclosing the very confidences and secrets that now make the representation impossible.

Rule 1.6 comes into play. That rule provides that a lawyer generally may not knowingly reveal the secrets or confidences of a client. See Rule 1.6(a), MRPC. Secrets are defined as information obtained in the professional relationship, the disclosure of which may be embarrassing or detrimental to the client. See Rule 1.6(d).

Here, the lawyer's disclosure of her consultation with complainant and the subject matter discussed violated Rule 1.6 and caused a negative effect on complainant's ability to visit her grandson.

Rather than disclose the confidences and secrets of either the "new client" or her original clients, the lawyer should simply have told both that she could not represent either "due to a conflict of interest." All lawyers should be wary of developing such conflicts of interest and of disclosing client confidences and secrets when declining representation or withdrawing from a case.