

ETHICS OPINION

RO-92-03

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QUESTION:

"Under the Alabama Rules of Professional Conduct, may an attorney, who has undertaken the representation of a minor in anticipation of criminal charges arising out of alleged acts by the minor against the minor's younger siblings, also represent the minor's parents in a dependency trial that is based on the parents' alleged failure to protect the siblings from the alleged conduct, if the attorney believes that the representation will not be adversely affected, that each client has consented after being advised of the advantages and risks of the common representation, and that each client has the same goal, namely, to secure the reunification of the family and the acquittal of the minor?"

ANSWER:

Based on the facts as stated in your request, there does not appear to be any conflict of interest in your representing the minor child in the criminal proceeding and, at the same time, representing the minor's parents in the dependency trial. However, since one of the clients is a minor, a guardian ad litem should be appointed to represent the minor in determining whether his interest is adverse to his parents and whether he should consent to common representation.

DISCUSSION:

The question you present comes within the scope of Rule 1.7, Conflict of Interest, which provides in pertinent part as follows:

"Rule 1.7 * * *

- (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:
 - (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client, and
 - (2) each client consents after consultation.

Your opinion request states that you do not believe your representation of one client will adversely affect your representation of the other, that both clients consent to common representation and that both clients seek the

same goal and therefore neither has an interest which is directly adverse to the other. Assuming the facts to be as stated in your request, this would, in most instances, be sufficient to overcome the conflict of interest prohibited by Rule 1.7. However, in this instance one of your clients is a minor and there may be a question as to whether a minor can consent to common representation or make the determination that his interest is not adverse to another client. For this reason the Disciplinary Commission feels that the better course of action would be to petition the court to appoint a guardian ad litem to represent the minor for the limited purpose of making a determination as to whether the minor's interest could be adverse to that of his parents and whether he should consent to common representation. It would also be preferable to have the guardian ad litem's determination regarding these issues placed on the record or at a minimum reduced to a written document signed by both the guardian and the minor client. If the guardian ad litem determines that the minor's interest will not be adverse to his parents and consents on behalf of the minor to common representation then you would not have a conflict on interest which would preclude your representation of the minor child and the parents of the minor child.

LCK/vf

1/17/92