

## Utah Ethics Opinions

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Utah State Bar

Ethics Advisory Opinion Committee

Opinion No. 96-11

Approved January 24, 1997

**Issue:** May an attorney appointed to represent both the mother and father in an abuse/neglect proceeding continue to represent one of the parents after an actual or potential conflict between the two parents arises?

**Opinion:** No. Such representation of either parent is prohibited by Rule 1.7 and Rule 1.9.

**Facts:** Counsel is appointed by statute to represent both parents in abuse/neglect proceedings concerning their children. At the time of the appointment, the interests of the parents are identical. However, since counsel's appointment, the parents have separated and the mother wants the father to have only supervised visitation. She now accuses the father of committing the alleged neglect without her knowledge or consent. No divorce proceeding has been filed by either spouse, and the State would pursue any necessary petitions against the father relating to abuse or neglect. The father has not consented to the continued participation by counsel.

**Analysis:** Rule 1.7 provides in pertinent part:

(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.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's own interest, unless:

(1) The lawyer reasonably believes the representation will not be adversely affected; and

(2) Each client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation to each client of the implications of the common representation and the advantages and risks involved.

In the present case, the mother is now accusing the father of committing the abuse or neglect complained of by the state. Such an accusation renders the interests of the mother and father directly adverse to each other. As a result, the dual representation is prohibited under Rule 1.7(a) unless counsel "reasonably believes" the interests of each party will not be adversely affected by representation of the other, and each client consents after consultation. Under these facts, counsel could not reasonably conclude that dual representation will not adversely affect counsel's relationship with either client. Therefore, there is no reason to seek the consent of either of the parties. Dual representation in this case would directly violate Rule 1.7(a)(1). (fn1)

Similarly, even if one could argue that the parents' interests are not directly adverse, the dual representation would be prohibited under Rule 1.7(b). Counsel's obligation on behalf of the mother to pursue allegations of abuse/neglect by the father will be materially limited by counsel's duty to the father to defend such accusations. Counsel could not reasonably believe that the attorney-client relationship with either party would not be adversely affected. Consent is irrelevant and dual representation under these facts would violate Rule 1.7(b)(1). (fn2)

Finally, counsel's continued representation of the mother is also prohibited under Rule 1.9, which prohibits counsel from representing another person in the same or a related matter when such person's interests are materially adverse to the interests of a former client, unless the former client consents after consultation. Under Rule 1.9, even if counsel withdraws from representation of the father, counsel will be precluded from a continuing representation of the mother because the proceeding is the same matter in which he represented the father, and the father has not consented to the continued representation of the mother.

## Footnotes

1. A similar result was reached in Utah Ethics Advisory Op. 116, 1992 WL 685249 (Utah State Bar, June 25, 1992), involving the representation of a divorcing couple.

2. It is common practice for counsel, prior to commencing representation of two or more parties in the same matter, to disclose the implications of common representation and obtain consent to continue representation in the event of a

future conflict. Such consent does not relieve counsel of the obligation to form a reasonable belief as to the propriety of such dual representation under Rules 1.7(a)(1) or 1.7(b)(1) at the time the conflict arises.

**Rule Cited:**

**1.7**