

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 89-004

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[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

SYLLABUS: A Legal Service project's governing board has the authority to set priorities for the allocation of resources in the legal service office. Such activity on the part of the governing board is not a violation of the Code of Professional Responsibility. However, once a case is undertaken and after the client is informed of any limitations relating to the representation, the governing board may not interfere with the representation.

OPINION: We have before us your request for an advisory opinion on whether a legal service corporation's policy which restricts representation for victims of domestic violence solely to domestic violence petitions and not divorces (with some specified exceptions) is in any way a violation of the Code of Professional Responsibility. Specifically, your questions are as follows:

1. Does the program's policy interfere with the duty of an attorney employed by the program to zealously represent a client who desires a divorce? (See DR 7-101 (A)).
2. Does the policy interfere with the independent judgment of an attorney employed by the program when the attorney's client desires a divorce and, in the attorney's judgment, a divorce is necessary to afford the client complete relief? (See DR 5-107 (B)).
3. Does the policy impermissibly limit the representation of an attorney employed by the program when the attorney's client desires a divorce? (Cf. DR 2-108 (A)).

As your letter indicates, the Legal Service Corporation regulations require each governing body to adopt priorities for allocating resources in an economical and effective manner. 45 C.F.R. Part 1620. In this regard and according to your request, the legal services project's governing body that you work for has adopted such a priority plan. Supra. Furthermore, clients are informed of the "no divorce" policy before representation is undertaken.

To begin with, we agree with the ABA's position that ". . . it is already recognized that in the face of limited resources, legal service offices must establish priorities for handling matters and accepting new clients." ABA Committee on Ethics and Professional Responsibility, Formal Op. 347 (1981). Although we are sympathetic to your concerns, such limitations upon the activities of a legal service office are not prohibited under the Code of Professional Responsibility. ABA Committee on Ethics and Professional Responsibility, Formal Op. 334 (1974).

Such priority settings are to take the form of broad guidelines rather than case-by-case review. Wolfram, Modern Legal Ethics 943 (1986). "Of course, any restrictions on representation must be made in accordance with the requirements of the Code of Professional Responsibility. ABA Committee on Ethics and Professional Responsibility, Formal Op. 334 (1974). Thus, once representation is undertaken both DR 5-107 (B) and DR 7-101 prohibit interference with that representation. Id. In other words, the governing body should not interfere with a lawyer's handling of a particular case. Wolfram, Modern Legal Ethics 943 (1986). However, there are certain decisions during the representation which may require approval of a director or governing board. See, e.g., 45 C.F.R. § 1617.

In regard to your third question, we do not agree that DR 2-108 (A) applies to this situation. That Code provision relates to restricting a lawyer's right to practice after termination of the employment relationship.

In conclusion, it is our opinion and you are so advised that a legal service organization's governing body's adoption of priorities for allocation of an office's resources is required under 45 C.F.R. § 1620 and does not run afoul of the Code of Professional Responsibility. Implementing priorities must be made if resources are to be effectively utilized provided it is done "fairly and reasonably with the objective of making maximum legal services available, within the limits of available resources." ABA Committee on Ethics and Professional Responsibility, Formal Op. 334 (1974).

This is an informal, non-binding advisory opinion based upon the facts presented and limited to questions arising under the Code of Professional Responsibility.