

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 89-25

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[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]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 aid society may send cases they cannot accept due to a conflict of interest to a volunteer lawyers' project without jeopardizing their right to represent the opposing side in the controversy. A person calling the legal aid society does not discuss his or her problem with a lawyer nor give any detailed information other than the general nature of the problem. The Legal Service Corporation's funding of the volunteer lawyers' project is accomplished through the legal aid society. This funding must not influence the independent professional judgment of any volunteer lawyer.

OPINION: We have before us your request for an advisory opinion on whether a city's volunteer lawyers' project can accept cases which the legal aid society cannot accept due to a conflict of interest. The volunteer lawyers' project (VLP) is funded through the legal aid society as required by a grant from the Legal Service Corporation. In compliance with the Legal Service Corporation's requirements, the legal aid society does the initial intake screening for cases which may ultimately be referred to the VLP.

An intake worker at the legal aid society takes the caller's name, address, source and amount of income, adversary's name and nature of the problem. The files created by the intake workers are not accessible to the staff attorneys in the legal aid office. The intake worker determines whether it would be a conflict of interest for the legal aid society to represent the client. If there is no conflict and the caller meets other requirements, the client is accepted for representation and an appointment with an attorney is set.

The legal aid society would like to send those clients who pass the initial financial and case type screening, but show up as a conflict, to the VLP. As you indicate in your letter this would mean that the legal aid society could be representing a wife in a custody case while a VLP attorney might be representing the husband in that same action.

A 1987 Ohio State Bar Association opinion found that it would be a conflict for a legal aid society to represent the spouse of a person whom they previously referred to a private attorney involvement project. Ohio State Bar Assn. Informal Op. 87-1(1987). That opinion involved a screening process whereby the caller gave detailed information of the legal problem involved, thereby creating a reasonable expectation that the information given by the caller would remain confidential.

In this request, the intake worker merely finds out the nature of the problem and briefly describes it in the file. In our view, a lawyer-client relationship has not been established at the intake stage. In this regard, the caller must be made aware that the intake worker is not a lawyer.

The ABA has issued an opinion which allows a legal aid society and a neighborhood law office to represent different sides in a controversy. ABA Committee on Ethics and Professional Responsibility, Informal Op. 1309 (1975). In that opinion, the neighborhood law office is funded through the legal aid society office, similar to the request here. The ABA relied in part on the fact that there was no other connection between the two offices including, no exchange of personnel or information and no controlling or supervisory relationship. We believe that the exchange of information at the screening stage in this request is not detailed enough to create a conflict of interest.

If the exercise of professional judgment by the lawyer eventually assigned to an indigent client's case is adversely affected in any way by the screening process or by economic considerations, that lawyer should decline the proffered employment. Code of Professional Responsibility, DR 5-105(A). Likewise, the desires of third persons should not be allowed to impair the lawyer's free judgment. Code of Professional Responsibility, EC 5-21.

One commentator has stated that many legal aid programs "have worked out arrangements with local bar associations under which the bar will provide pro bono representation to a person eligible for legal services but whose representation by legal service program lawyers would cause a conflict." Wolfram, Modern Legal Ethics, 943 (1986).

In our view, your legal aid society may send those clients which your office cannot represent due to a conflict of interest to the VLP. We suggest however, that the legal aid society insure that the files on callers prepared by intake workers are not accessible to the attorneys in the office. This becomes essential in cases where the VLP and legal aid society represent opposing parties in a case. We recommend that each case be handled individually taking into consideration the duty of confidentiality, the appearance of impropriety and any conflict of interest.

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