



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in May 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.2, 1.3, 1.7, and 1.16(a)(2). This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

**Opinion No. 91-8
October 25, 1991**

Topic: Conflict of Interest

Digest: Attorney retained by mother and minor daughter to pursue paternity action. Case is tried, lost, appealed, briefed and argued on appeal. While awaiting decision by Appellate Court, attorney may not honor mother's instruction to dismiss appeal.

Ref.: Illinois Rules of Professional Conduct, Rules 1.2, 1.3, 1.7, and 1.16(a)(1)

FACTS

Attorney is retained by Mrs. A and her daughter B, a minor, to pursue a paternity action. Suit is filed under the Paternity Act, putative father is served and case tried. An adverse result is appealed, briefed and argued. All fees and costs are paid by Mr. and Mrs. A. During the pendency of the paternity action, Mrs. A and B have a disagreement resulting in a Guardianship proceeding filed by Mr. and Mrs. A in the interest of B. This results in the appointment of B's grandparents as guardians. The attorney has no involvement in the guardianship. While waiting for a decision from the Appellate Court, Mrs. A instructs the attorney to dismiss the appeal.

QUESTION

Must the attorney follow the instruction of Mrs. A and dismiss the appeal?

OPINION

No. Although the deteriorated relationship between Mrs. A and B has created a potential conflict for the attorney, his allegiance must remain with B. In fact, the granting of guardianship of B to the grandparents has probably rendered any instruction by Mrs. A ineffective.

If the attorney were to accede to Mrs. A's instruction, he would be violating Rule 1.2(f)(1), 1.3 and 1.7(a)(1) and (2).

Rule 1.2(f)(1) states:

(f) In representation of a client, a lawyer shall not: (1) file a suit, assert a position, conduct a defense, delay a trial or take other action on behalf of the client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure another.

Rule 1.3 states:

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.7(a)(1) and (2) states:

(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 relationship will not adversely affect the relationship with the other client: and (2) each client consents after disclosure.

In this case, the real party in interest in the paternity case is B. At this point all the attorney is required to do is wait for a decision from the Appellate Court. The instruction by Mrs. A to dismiss the appeal following argument would serve only to "harass" or "maliciously injure" and be "adverse" to the interests of B. Furthermore, Rule 1.7(a)(2) would require the attorney to obtain the consent of the grandparents on behalf of the minor B. Additionally, Rule 1.16(a)(1) would seem to require this attorney to withdraw from his representation of Mrs. A.

Mrs. A would have the right to be dismissed as party to the appeal. If so, the guardians would be substituted as parties.

The facts in this case are not clear as to whether the "child" in the paternity action is B or B's child. However, the opinion of the Committee would be the same in either case.

(Once the opinion of the Appellate Court is handed down, the attorney is certainly free to reassess his representation of the parties herein.)

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