

MINUTES

COMMITTEE: Ethics Committee

DATE: October 5, 2000

3. CHAPTER 6: WHETHER LAWYER MAY ACT FOR MORE THAN ONE PARTY IN PREPARING A REPRESENTATION AGREEMENT

At the request of a lawyer the Committee considered whether it is proper for a lawyer to act for more than one of an adult, a representative and a monitor in the preparation of a Representation Agreement under the *Representation Agreement Act*.

The Committee noted that according to the principles set out in Chapter 6, Rules 1, 2 & 3 of the *Professional Conduct Handbook* lawyers have a duty to give undivided loyalty to every client. In light of that principle the Committee was of the view that lawyers, if they propose to act for both an adult and representative jointly, must be extremely vigilant to ensure that they do not act in a conflict. The responsibilities placed on representatives by the Act are onerous, and lawyers must not allow a joint retainer to inhibit them from highlighting the seriousness of those responsibilities for representatives.

Some situations where conflicts are a risk if the lawyer acts for both the adult and representative occur where the adult does not have full capacity, where there appears to be undue influence, or where there is disagreement about any aspect of the proposed agreement, including the scope of the representation, the remuneration of the representative or the responsibility for the lawyer's fees. Other circumstances may also give rise to conflicts, including conflicts that do not emerge until after a lawyer has begun work on the agreement.

Because of the serious obligations imposed on monitors by the legislation, and because it is usually not necessary to have a monitor in order to complete an agreement, it was the Committee's view that lawyers should not represent both an adult and the monitor of the agreement the adult proposes to sign. The Committee was also of the opinion that the interests of a representative and a monitor to the same agreement are sufficiently divergent that a lawyer cannot represent them jointly.

A lawyer acting for more than one party in the preparation of a Representation Agreement must comply with the requirements for joint representation in Chapter 6, Rules 4, 5 & 6 of the *Professional Conduct Handbook*. In determining whether there is a conflict that may prevent the lawyer from acting, it was the Committee's view that a lawyer may wish to meet with the parties separately.

JO:jeh
00-10