

FINAL

ETHICS ADVISORY PANEL
OPINION # 95-22 , REQUEST # 584
ISSUED - JANUARY 11, 1996

FACTS:

Attorneys A and B are both staff attorneys at a state agency. B is the inquiring attorney.

A gave some free legal advice to a friend who was representing himself (pro se) in a child custody matter.

The friend later retained private counsel, who filed a motion to vacate a prior judgment against the client.

The opposing party retained the state agency to defend against the motion and A learned, while in court, that he/she was scheduled to handle that defense. A promptly recused him/herself and turned the matter over to B.

B states that, in advising the friend, A was acting outside the scope of his/her employment, and that the agency has not previously represented either party.

ISSUE PRESENTED:

Can B or any other staff attorney represent A's friend?

OPINION:

No. No member of the Agency's staff may undertake the representation.

REASONING:

The issue presented is whether the prohibition of Rule 1.7(a)(1) and (2) applies. It states, in part, that:

- (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

FINAL

OP #95-22, RQ #584

Page Two

- (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
- (2) each client consents after consultation.

The Panel believes that an attorney-client relationship was established once A rendered advice to his/her friend. Because the advice is considered "representation" with the meaning of Rule 1.7(a) the friend is a client and the prohibition of the Rule applies.

The Panel suggests that this agency should adopt an internal procedure to safeguard against future conflicts of interest.