

ETHICS ADVISORY OPINION

09-02

UPON THE REQUEST OF A MEMBER OF THE SOUTH CAROLINA BAR, THE ETHICS ADVISORY COMMITTEE HAS RENDERED THIS OPINION ON THE ETHICAL PROPRIETY OF THE INQUIRER'S CONTEMPLATED CONDUCT. THIS COMMITTEE HAS NO DISCIPLINARY AUTHORITY. LAWYER DISCIPLINE IS ADMINISTERED SOLELY BY THE SOUTH CAROLINA SUPREME COURT THROUGH ITS COMMISSION ON LAWYER CONDUCT.

Factual Background:

Attorneys A, B, C, and D are all employed by the Public Defender's Office. Each attorney represents a client who is a co-defendant. The clients have inconsistent defenses. The attorneys have been screened in a timely manner as prescribed in Rule 1.10(e)(1) and have autonomy required by Rule 1.10(e)(2).

Questions Presented:

1. Do the attorneys need to get informed consent confirmed in writing from their clients per Rule 1.7?
2. Is there any difference under Rule 1.7 if one or more of the co-defendants are seeking to testify against the other co-defendants at trial and will be subject to cross examination by the co-defendant's public defender ?

Opinion:

If the requirements of Rule 1.10(e), which are exceptions to Rule 1.10(a), are satisfied, the attorneys need not refer to Rule 1.7.

Provided that the appropriate screening and autonomy requirements are met, the attorneys do not need the consent confirmed in writing required by Rule 1.7. Therefore, there is no difference under Rule 1.7 if the co defendants will testify against each other.

If, however, the screening and autonomy requirements of Rule 1.10(e) are not met, the public defender would have to abide by the dictates of Rule 1.7, and under the facts presented (inconsistent defenses), the conflict would not be consentable under Rule 1.7.