

## **ETHICS ADVISORY OPINION**

### **15-01**

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:**

Lawyer met with a potential client ("T") in 2012 regarding a child custody action against M concerning the parties' minor child. Both T and her current husband ("P") attended the initial consultation at Lawyer's office, wherein P paid the consultation fee in cash. Lawyer's office provided a receipt to P for the payment of T's initial consultation.

During the initial consultation, Lawyer explained to both T and P that only T would be represented by Lawyer and that Lawyer would be advocating only for her interests in the child custody action against M. Both T and P acknowledged that only T would be Lawyer's client. T and Lawyer entered into an attorney-client contract for representation of T in her child custody action against M. P's father ("P Senior") sent a cashier's check to Lawyer as payment for T's retainer fee for this matter.

Lawyer filed the initial pleadings on behalf of T in 2012. The only named parties in this action were T and M. Throughout representation of T in the custody action, Lawyer spoke with both T and P about the merits of the case, but T was always present for each conversation. Subsequently, P wrote an affidavit in support of T receiving custody of the minor child.

Subsequent to the filing of the Final Order in 2014, Lawyer had no further contact with P or P Senior. Neither P nor P Senior are named or referenced in any of the pleadings, motions, or Orders in T's 2012 child custody action against M.

Recently, T contacted Lawyer seeking legal representation for a divorce against P. Neither Lawyer nor his staff was provided any knowledge of T and P's diminishing relationship during his prior representation of T.

#### **Question Presented:**

May Lawyer represent T in a divorce action against P?

**Summary:**

Yes. Lawyer was explicit in his discussion with T and P that only T would be his client. As long as P's and P Senior's payment of attorney's fees does not affect Lawyer's professional judgment and ability to competently and diligently represent T, then Lawyer may ethically represent T in a divorce action against P.

**Opinion:**

The mere fact of payment of fees does not create an attorney-client relationship, nor does it implicate Rule 1.7(a)(2). Rule 1.7(a), SCRPC, states a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to ... a third person..." Rule 1.7(a)(2). The facts suggest that only T was lawyer's client in the child custody action. Lawyer was explicit in explaining this to both T and P in the initial consultation, and each stated they understood. P paid the fee and accompanied T to meet with lawyer throughout the representation. P Senior paid the retainer agreement but was never involved in the custody action and never spoke with Lawyer. There is nothing to suggest that P or P Senior interfered with the attorney-client relationship or the lawyer's independent judgment in representing T.

Finally, the information gained during the consultation with T, which P attended, would have been regarding T's child custody action. P was not the father, and any information he may have provided was likely to either bolster T or discredit M. P even went so far as to sign an affidavit on behalf of T to submit to the court; the contents likely included facts regarding the best interest of the child and made T fit for custody and M unfit. Further, lawyer specifically explained to P that he would not be P's attorney and no attorney-client relationship was formed, to which P agreed. Lawyer states that no information regarding the relationship status of T and P was ever disclosed to lawyer or his staff. Because of this, P would not be considered a client or even a prospective client. Therefore, Rules 1.9 and 1.18, SCRPC, would not apply.