

ETHICS ADVISORY OPINION

09-11

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:

The Magistrate's Court Docket Meeting is scheduled, and the cover letter that was mailed to all parties includes a provision that failure by Affiants or Prosecuting Witnesses to appear will result in the Court assuming that they no longer wish to prosecute the case and, upon proper motion, will dismiss the case. The letter further provides if a Defendant fails to appear, a jury will be selected and the Defendant will be tried in absentia.

Scenario #1:

Both Lawyer A and Lawyer B are scheduled to attend the Docket Meeting. Lawyer B cannot attend and has requested Lawyer A to speak on his behalf to request the Court to continue the case. Lawyer A rents office space with Lawyer B but otherwise has no business relationship or association.

Scenario #2:

Lawyer A, Lawyer C and Lawyer D are scheduled to attend the Docket Meeting. Lawyer C and Lawyer D do not attend, nor do either of their clients who are Defendants in Affiant cases. At the Docket Meeting, neither Affiant is present for the cases handled by Lawyers C and D. Lawyer A has no business relationship or association with Lawyer C or Lawyer D, and neither Lawyer C nor Lawyer D requested Lawyer A to act on their behalf.

Questions Presented:

1. May Lawyer A appear on behalf of Lawyer B without the knowledge or permission of Lawyer B's client to request the matter be continued?
2. May Lawyer A move, on behalf of Lawyer C and Lawyer D, to dismiss each case due to the Affiant's failure to appear to prosecute the matters?

Summary:

1. Yes, a lawyer may appear on behalf of another lawyer to request a continuance without prior consent of the client.
2. No, a lawyer may not act on behalf of another lawyer or a non-client without consent from the lawyer or entering into an attorney-client relationship with the non-client.

Opinion:

Scenario #1:

While attorney-client relationships can be formed in a variety of ways, for the purposes of this scenario, the Committee assumes that, based on the limited scope of Lawyer A's appearance at the Docket Hearing, no attorney-client relationship would be formed between Lawyer A and Lawyer B's client.

Lawyer A may appear on behalf of Lawyer B to request a continuance. It is irrelevant as to Lawyer A sharing offices with Lawyer B so long as Lawyer B ensures the confidentiality of his client's information in accordance with S.C. Rule of Professional Conduct 1.6.

Lawyer B is well-advised to communicate with his client pursuant to S.C. Rule of Professional Conduct 1.4(a). Since there is no attorney-client relationship between Lawyer A and Lawyer B's client, it is solely within Lawyer B's responsibility to advise his client that Lawyer A will request a continuance on his behalf.

Scenario #2:

When Lawyer A has no relationship or association with Lawyer C, Lawyer D or the parties in the case, Lawyer A may not make a motion to dismiss a case on behalf of one party without consent from the Lawyer or entering into an attorney-client relationship with the client. S.C. Rule of Professional Conduct 8.4(e) provides that it is improper for a lawyer to "engage in conduct that is prejudicial to the administration of justice." Without consent from Lawyer C or Lawyer D or being in an attorney-client relationship with one of the parties, it would be improper for Lawyer A to act on their behalf.

Furthermore, the Committee would direct Lawyer A to review the Preamble to the South Carolina Rules of Professional Conduct. Paragraph 1 provides that a lawyer has "special responsibility for the quality of justice," and Paragraph 7 advises that "a lawyer is also guided by personal conscience and the approbation of professional peers." Without prior discussions with Lawyer C, Lawyer D or the parties to the litigation, Lawyer A is unable to know what arrangements have been made, and while Lawyer A may think he is being helpful to Lawyer C or Lawyer D, he may, in fact, cause harm to Lawyer C client, Lawyer D's client or the Affiants in the case.

Lawyer A should also be cautioned that if he were to act contrary to this opinion, he may inadvertently create an attorney-client relationship between himself and Lawyer C's client or Lawyer D's client which could result in several other rules being implicated.