

State Bar of South Dakota

Ethics Opinion 97-3

May 5, 1997

- **Rules 1.3; 1.6; 1.7**
- **Subject: Client confidences; Conflict of interest; Withdrawal as counsel.**
- **Summary: Attorney, representing separate divorce clients, obtains information adverse to one client, which will be an issue in each client's case. Attorney must withdraw from representing both clients and refrain from disclosing the information.**

**FACTS**

Attorney is representing two women in their respective divorces. One client disclosed to attorney that client's husband is having a sexual relationship with attorney's other divorce client. That other client has advised attorney that she is having a relationship, but has not identified who the relationship is with. The sexual relationship is likely to arise as an issue in both cases.

**OPINION**

Based upon the above facts, it is the opinion of the Committee that you must withdraw from both cases and that you must refrain from confirming any information concerning the sexual relationship to the client who may not be certain of the identity of her spouse's sexual partner.

Pursuant to SDCL 16-18 Appx., Rule 1.3, a lawyer is charged with diligently representing his or her client. Rule 1.6 prohibits a lawyer from revealing "information relating to representation of a client unless the client consents after consultation...." Finally, Rule 1.7(a) prohibits representing a client "if the representation of that client will be directly adverse to another client." Rule 1.7(b) also prohibits representation if it would "be materially limited by the lawyer's responsibilities to another client or to a third person...." While, under some circumstances, a lawyer can obtain informed consent for a conflict or a potential conflict, here the lawyer is precluded from the complete disclosures which would be required for informed consent. In addition, the lawyer's diligence would always be open to question. In a virtually identical set of facts, the South Carolina Ethics Committee opined that withdrawal in both cases was necessary, regardless of the source of the information and that informed consent by the clients could not cure the conflict of interest, citing Rules 1.3, 1.6 and 1.7. This Committee, based upon the above, agrees.

Lonnie R. Braun  
Chair, Ethics Committee  
State Bar of South Dakota